SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1908.

No. 427.

THE UNITED STATES, APPELLANT,

vs.

THE CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

INDEX.

46909—08——1

a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December term, 1907, of said court, begun and held at the United States court-house in the city of St. Louis, Missouri, on the first Monday in December, to wit, the second day of December, A. D. 1907, before the honorable Walter H. Sanborn, honorable William C. Hook, and honorable Elmer B. Adams, circuit judges.

Attest:

[SEAL.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the seventeenth day of January, A. D. 1907, a transcript of record, pursuant to an appeal allowed by the Circuit Court of the United States for the Northern District of Iowa, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the United States of America was appellant and the Chicago, Milwaukee and St. Paul Railway Company was appellee, No. 2545, which said transcript of record is in the words and figures following, to wit:

1 United States of America
Northern District of Iowa—ss.

Pleas before the Circuit Court of the United States in and for the Northern District of Iowa, Eastern Division at a term begun and holden at Dubuque in said District on the 1st Tuesday of December A. D. 1905 before Hon. H. T. Reed, Judge of the Northern District of Iowa.

United States of America Plaintiff
vs.
Chicago Milwaukee & St. Paul Railway Company Defendant.

No. 233 Equity.

Be it remembered, That heretofore to-wit on the 1st day of June A. D. 1903, a Bill of Complaint was filed in the foregoing entitled cause, in the office of the Clerk of the Circuit Court of the United States in and for the Northern District of Iowa, Eastern Division in the words and figures following, to-wit:

2 In the Circuit Court of the United States, Northern District of Iowa, Eighth Circuit.

December Term.

United States of America Plaintiff
vs.
The Chicago, Milwaukee & St. Paul Railway Company Defendant.

Equity.

To the Honorable Judges of the Circuit Court for the Northern District of Iowa;

The United States of America, by the Attorney-General thereof brings this bill of complaint against the Chicago, Milwaukee & St. Paul Railway Company, a corporation organized and existing under, and by virtue of, the laws of the State of Wisconsin;

And thereupon your orator complains and shows unto the court that, by the act of Congress approved May 12, 1864 entitled "An Act for a grant of lands to the State of Iowa, in [alternare] sections, to aid in the construction of a railroad in said State", Congress granted to the State of Iowa, to aid in the construction of a railroad now known as the Chicago, Milwaukee & St. Paul Railway, extending from a point in

South McGregor, Clayton County, Iowa, Westerly on or along the forty-third (43rd) parallel of North latitude, to a point in O'Brien County, Iowa, a large amount of lands in said State of Iowa, which act may be found in United States Statutes-at-Large, Volume 13, at page 72 thereof, and to the whole of which said act your orator refers.

3 2. Your orator further alleges that the McGregor Western Railroad Company, for the use and benefit of which the grant of lands was made by the act of May 12, 1864, wholly failed to comply with the conditions of said act, and forfeited all right to the benefits of said grant; and that the Twelfth General Assembly of the State of Iowa, under date of Febuary 27, 1868, passed an act entitled "An Act to resume all the lands and rights conferred upon the McGregor Western Railroad Company, by or under an Act of Congress, approved May 12, A. D. 1864," which act may be found in the Iowa Session laws of 1868, in chapter 16 thereof, and to all of which act your orator refers.

3. Your orator further alleges that the Twelfth General Assembly of the State of Iowa, under date of March 31, 1868, passed an act entitled "An Act making a grant of land to the McGregor & Sioux City Railway Company, or, in case of their failure to accept the same, to the Forty-Third parallel Company, and to execute the trust conferred by Act of Congress entitled "An Act for a grant of land to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State, approved May 12, 1864," which act may be found in the Iowa session laws of 1868, in chapter 58 thereof, and to all of which act your orator refers.

4. Your orator further alleges that the said McGregor & Sioux City Railway Company wholly failed to comply with the conditions of the said act of Congress of May 12, 1864, and of said act of the General Assembly of Iowa of March 31, 1868, and that the Seventeenth General Assembly of the State of Iowa, under date of February 27th,1878, passed an act entitled, "An Act in relation to the lands granted to the State of Iowa by act of Congress, entitled, 'An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State' approved May 12, 1864, and to grant to and impose upon the Chicago, Milwaukee & St. Paul Railway Company, the powers and liabilities mentioned in Chapter Four (4) Title (10) of the Code", which act
4 may be found in the Iowa session laws of 1878, in chapter 21 thereof, and to all of which act your orator refers.

5. Your orator further alleges that, in the years 1864 and

1869, maps of definite location, designating the line of said road in the State of Iowa, were filed in the office of the Commissioner of the General Land Office definitely locating the line thereof from a point in South McGregor, Clayton County, Iowa, westerly on or along the Forty-third (43d) parallel of North Latitude, to a point in O'Brien County, Iowa.

6. Your orator further alleges that, at the date of the said definite location of the road now known as the Chicago, Milwaukee & St. Paul Railway, all of the lands referred to in Exhibit "A" to this bill, situated within the ten mile limits of the grant to the State of Iowa to aid in the construction of said railroad, were covered by existing claims of record in the office of the Commissioner of the General Land Office, consisting of homestead entries, pre-emption declaratory statements, warrant locations, or swamp selections, which were all pending before the Department of the Interior for adjudication at the time of the attachment of rights under the said railroad grant, and the lands so covered by claims of record were excepted from the operation of the said grant of May 12, 1864.

7. Your orator further alleges that an act, approved March 3, 1887, was passed by Congress, entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of un-earned lands, and for other purposes," which act may be found in volume 24 of the United States Statutes-at-Large, at page 556 thereof, and to the whole of which act your orator refers.

5 8. Your orator further alleges that an act, approved February 12, 1896, was passed by Congress amending said act of March 3, 1887, entitled "An Act to amend section four of an Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of un-earned lands, and for other purposes," which act may be found in volume 29 of the United States Statutes at Large, at page 6 thereof, and to the whole of which act your orator refers.

9. Your orator further alleges that an act, approved March 2, 1896, was passed by Congress, entitled "An Act to provide for the extension of time within which suits may be brought to vacate and annul land patents, and for other purposes," which act may be found in volume 29 of the United States Statutes at Large, at page 42 thereof, and to the whole of which act your orator refers.

10. Your orator further alleges that, after the date of the said grant to the State of Iowa to aid in the construction of said railroad and prior to the passage of said acts of Congress

of March 3, 1887, and March 2, 1896, the officers of the Interior Department, erroneously, in-advertently, and improvidently, issued patent of the United States to the State of Iowa for all the land described in Exhibit "A" to this bill as lands inuring to it under the said grant of May 12, 1864, under the erroneous supposition that such lands were embraced in said grant and were free from any claims of record at the dates of the definite location of the said road and which patents were accepted and received by said State for the purposes of the grant and afterwards by it patented to the Chicago, Milwaukee & St. Paul Railway Company, under the same error and mistake.

6 11. Your orator further alleges that all the lands described in Exhibit "A" to this bill were, prior to the passage of said act of March 2, 1896, sold by the said Chicago, Milwaukee & St. Paul Railway Company to numerous persons, bona fide purchasers, which said purchasers so purchased said lands in good faith and for value, without notice or knowledge of any claims or rights therein of the United States or of any settler or individual and who, in good faith, believed that they were purchasing from said company good and sufficient title to said lands.

12. Your orator further alleges that the titles of all of said purchasers from the said Chicago, Milwaukee & St. Paul Railway Company of the said lands described in Exhibit "A" to this Bill were confirmed to them respectively by the act of Congress approved March 2, 1896, which said act is hereinbefore more fully referred to and set forth.

13. And your orator alleges that the value of the said respective tracts of land at the time of said respective sales exceeded the sum of two dollars and fifty cents ($2.50) per acre, and your orator further alleges that the defendant company holds the proceeds from the sales of said lands in trust for your orator.

14. Your orator further alleges that on August 19, 1892, demand was made by direction of the Secretary of the Interior upon the Chicago, Milwaukee & St. Paul Railway Company, under act of March 3, 1887 (24 Stat. 556), entitled "An Act to provide for the adjustment of land grants made by Congress to aid in the construction of railroads and for the forfeiture of un-earned lands, and for other purposes," for the reconveyance to the United States of all those lands erroneously patented as aforesaid, and set out in Exhibit "A" hereto attached, to which demand said railway company appears to have made no answer.

7 15. And your orator further alleges that in compliance with a [requirements] of the Secretary of the In-

terior, of August 15, 1896 the said Chicago, Milwaukee & St. Paul Railway Company furnished the Department of the Interior with a written statement showing the sale to bona fide purchasers of all of the lands described in Exhibit "A" to this bill.

16. And your orator further alleges that, more than ninety (90) days prior to the commencement of this suit, the Secretary of the Interior demanded of the said Chicago, Milwaukee & St. Paul Railway Company, that it should account to and pay over to the United States the proceeds received by it from such sales, with which demand the said railway company has failed to comply.

17. Your orator further shows unto the court that the determination of the rights of your orator in the premises involved the construction and interpretation of said numerous acts of Congress and of numerous contracts in writing executed by the said Chicago, Milwaukee & St. Paul Railway Company to numerous persons, and further involves the establishment and enforcement of a [turst] in favor of your orator in the proceeds of said sales, and of a lien; and in securing thereon to your orator an accounting from the said Chicago, Milwaukee & St. Paul Railway Company, there is great complexity involved in determining what tracts of land have been sold or contracted to be sold by said company and at what price and to whom and what amount has been paid by way of principal and interest on each of said tracts to said company and the good faith of the purchasers of such numerous tracts.

18. Wherefore, your orator, having no plain, speedy, or adequate remedy at law, prays that the court will determine the true construction of the said acts of Congress and define and determine the rights and obligations of your orator and
8 of defendant railway company.

That the court will decree that the defendant hold in trust for your orator the proceeds of all sales of said tracts of lands set forth in Exhibit "A" to this bill; that such indebtedness be declared a lien upon all funds in the hands of said defendant realized from sales of said lands, and that the said defendant be required to account to and pay over said sums to your orator or into this honorable court for the benefit of your orator.

Your orator further prays for such other and further relief as to the court may seem equitable, and for the costs of this suit.

Your orator requires defendant, Chicago, Milwaukee & St. Paul Railway Company, to show to the best of its knowledge,

information and belief, and after an examination of its books and records, the following facts and matters;

(1) Said company is required to state what sales or contracts to sell, it has made of each of the tracts of land described in Exhibit "A" to this bill, with the name of the purchaser of each tract and the name of each assignee or transferee of such tracts or of any contract given therefor by said company.

(2) The date of such sale or contract to sell and the form and character of the instrument in writing, if any, given by said company to each such purchaser.

(3) The agreed price of each such contract;

(4) The date and amount of each payment of principal and of interest upon each such sale made by such several purchasers to said company.

May it please your honors to grant unto your orator a writ of subpoena issuing out of and under the seal of this honorable court [driected] to the defendant Chicago, Milwaukee & St. Paul Railway Company, commanding it at a certain day and under a certain penalty therein to be inserted, personally to be and appear before your honors in this honorable court and then and there to answer, but not under oath, except as to the interrogatories herein propounded, answers under oath
9 being hereby expressly waived, except as to such interrogatories, and as to them answer under oath being required, all and singular the premises, and to stand to, perform, and abide by such orders and decrees therein as to your honors shall seem meet.

And your orator will ever pray.

H. G. McMILLAN,
United States Attorney.

PHILANDER C. KNOX,
Attorney General.

10 Plaintiff's Exhibit "A."

Parts of Sections.	Sec.	T. N.	R. W.	Area Acres
N. ½ NE ¼	5	95	27	104.67
NE ¼ NE¼ and SE ¼ SW ¼	9	95	27	80.
NW ¼ NE ¼	15	95	27	40.
SW ¼ NE¼	19	95	27	40.
SE ¼ SW ¼	1	96	27	40.
NE ¼ SE ¼	9	96	27	40.

S ½ SW ¼	17	96	27	80.
SE ¼ NW ¼	25	96	27	40.
SE ¼ SE ¼	1	97	27	40.
NW ¼ SW ¼ and SW ¼ SE ¼	5	97	27	80.
NW ¼ NE ¼ and SE ¼ NE ¼	9	97	27	80.
N ½ NE ¼ and N ½ NW ¼	11	97	27	160.
SE ¼ NW¼	13	97	27	40.
E ½ SW ¼	21	97	27	80.
NE ¼ NW ¼	33	97	27	40.
SW ¼ NE ¼	33	98	27	40.
NW ¼ NE ¼	35	98	27	40.
NW ¼ SW ¼	3	96	28	40.
NW ¼	11	96	28	160.
NW ¼ NE ¼	11	96	28	40.
S ½ SW ¼ and				
NW ¼ SE ¼	13	96	28	120.
NW ¼ NW ¼	25	96	28	40.
SE ¼ NW ¼ and				
NW ¼ SE ¼	5	97	28	80.
SE ¼ NW ¼	9	97	28	40.
E ½ SE ¼	25	97	28	80.
11 S ½ SW ¼	33	98	28	80.
NW ¼ SE ¼ and				
SW ¼ SW ¼	5	94	29	80.
NE ¼ NW ¼	7	94	29	40.
NW ¼ NE ¼	13	96	29	40.
NE ¼ SW ¼	11	97	29	40
NW ¼ NW ¼ and				
SE ¼ NW ¼	29	97	29	80.
SE ¼ SE ¼	5	95	30	40.
SW ¼ SW ¼	15	95	30	40.
NE ¼ SE ¼	17	95	30	40.
SE ¼ SE ¼	25	95	30	40.
W ½ NW ¼ and				
SE ¼ SW ¼	27	95	30	120.
NE ¼ NW ¼	33	95	30	40.
N ½ NE ¼	1	96	30	67.81
NW ¼ SE ¼	15	96	30	40.
NW ¼ NE ¼	17	96	30	40.
SW ¼ NE ¼ and				
E ½ SW ¼	33	96	30	120.
NW ¼ NE ¼ and				
NE ¼ NW ¼	21	97	30	80.
NE ¼ NE ¼	25	97	30	40.
NW ¼ SW ¼	31	97	30	37.89
SE ¼ NE ¼	35	97	30	40.
SE ¼ SE ¼	7	96	31	40.
S ½ SE ¼	13	97	31	80.

W ½ NW ¼ and NW ¼ SW ¼	19	97	31	104.44
NE ¼ NE ¼ and NE ¼ SW ¼ SE ¼ NW ¼	23	97	31	80.
NE ¼ SW ¼ and NW ¼ SE ¼	25	97	31	120.
SW ¼ NW ¼	29	97	31	40.
NE ¼ SE ¼	31	97	31	40.
NW ¼ NW ¼	35	97	31	40.
E ½ SE ¼	19	94	32	80.
NE ¼ SW ¼ and SW ¼ SW ¼	11	96	32	80.
SW ¼ NW ¼	23	96	32	40.
N ½ NE ¼ NE ¼ NW ¼ and SW ¼ NW ¼	25	96	32	160.
SW ¼ SW ¼	13	97	32	40.
S ½ SW ¼	25	97	32	80.
E ½ NE ¼	35	97	32	80.
NW ¼ NW ¼	23	94	33	40.
NW ¼ NW ¼	33	98	35	40.
NW ¼ SE ¼ and NE ¼ SW ¼	29	98	36	80.
SE¼ SW ¼	33	98	36	40.
NW ¼ NW ¼	35	98	36	40.
E ½ SW ¼ and NW ¼ SW ¼	27	98	38	120.
			Total	4,264.81

Endorsed: In U. S. Circuit Court Northern District of Iowa; United States vs. C. M. & St. P. Ry. Co.; Bill of Complaint. Filed June 1, 1903. A. J. Van Duzee, Clerk. By M. L. Norman, Deputy.

13 And on the 2nd day of June, 1903, there was filed in the office of the clerk of said court, in this cause, the subpoena in chancery with marshal's return of service endorsed which is in words and figures following:

United States of America, Northern District of Iowa, Eastern Division.

The President of the United States: To Chicago, Milwaukee & St. Paul Railway Company,

We command you and each of you, that you appear before the Judge of the Circuit Court of the United States for the Northern District of Iowa at Dubuque on the first Monday of

July being the 6th day of July next (A. D. 1903) to answer to the bill of complaint of the United States this day filed in the office of the clerk of said court, and then and there to receive and abide by such judgment and decree as shall then and thereafter be made, upon pain of such judgment being pronounced you by default.

To the Marshal of the Northern District of Iowa:

Returnable to the July Rule Day it being Monday the 6th day of July A. D. 1903.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the U. S. at Dubuque this the 1st day of June, 1903, and of the Independence the 127th year.

[Seal]

A. J. VAN DUZEE,
Clerk U. S. C. C.,
Northern District of Iowa.

Memorandum: The within named defendant is notified that unless it enters its appearance in the clerk's office of said court at Debuque aforesaid, on or before the day to which the above writ is returnable, as above stated, the complaint will be taken against it as confessed and a decree entered thereon accordingly.

[Seal]

A. J. VANDUZEE,
Clerk U. S. C. C.,
Northern District of Iowa.

14 Marshal's Return.

"This writ came into my hands for service on the second day of June A. D. 1903, and I served the same on the within named Chicago, Milwaukee & St. Paul Railway Company, on the second day of June A. D. 1903, by service upon J. W. Stapleton, Division Superintendent of said C. M. & St. P. Ry. Company, reading waived, and by delivering a true copy of same to said J. W. Stapleton, at Dubuque, in the County of Dubuque, and State of Iowa.

EDWARD KNOTT,
U. S. Marshal.

By J. W. Philpot, Deputy.

Marshal's Fees; Mileage 2 miles $.12; Service on one $2. Total $2.12.

Endorsed: No. 233 Equity: United States of America Northern District of Iowa; United States vs. Chicago Mil-

waukee & St. Paul Railway Company; Returnable to Rule Day First Monday in July 1903 A. J. VanDuzee Clerk.

Filed June 2, 1903. A. J. VanDuze, Clerk, by M. L. Norman, Deputy.

15 And afterwards, to-wit on the 3rd day of August A. D. 1903 there was filed in the office of the Clerk of said Court, in this cause, an Answer of defendant, which is in words and figures following, to-wit:

In the Circuit Court of the United States. For the Northern District of Iowa. Dubuque Division.

United States of America, Complainant,
vs. Equity.
Chicago, Milwaukee & St. Paul, Railway Company, Defendant.

Answer of Defendant, Chicago, Milwaukee & St. Paul Railway Company, to the Bill of Complaint in said Cause;

This defendant, expressly saving and reserving unto himself the benefits of all exceptions to the errors and imperfections in said Bill contained, for answer thereto or to so much thereof as it is advised is necessary or material to make answer unto, answering says:

1. This defendant admits that by an Act, approved May 12, 1864, entitled "An Act for a Grant of Lands to the State of Iowa, In Alternate Sections, to aid in the Construction of a Railroad in said State,"—the Congress of the United States duly granted unto said State of Iowa, for the use and benefit of the McGregor Western Railroad Company, for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main Street, South McGregor, Iowa, in a westerly direction by the most practicable route on or [neat] the forty-third parallel of north latitude until it should intersect,
16 in O'Brien County, Iowa, a certain other railroad (referred to in said Act) running from Sioux City to the Minnesota State line, every alternate section of land designated by odd numbers for ten (10) sections in width on each side of said McGregor [Wrstern] Railroad as thereafter located; which Act is contained in Vol. 13, at page 72 of the United States Statutes at large, as stated by complainant:

2. And defendant avers that the lands, rights, powers, duties and trusts conferred upon the State of Iowa, in said Act of Congress, were duly accepted by an Act of the Eleventh General Assembly of Iowa, entitled, "An Act to accept the Grant of Land to the State of Iowa, made by Act of Congress of May 12, 1864, and to Carry out the Provisions of said Act

entitled 'An Act for a Grant of Land to the State of Iowa, in Alternate sections, to aid in the Construction of a Railroad in said state,'" approved April 20, 1866; and an amendment thereto (simply correcting a verbal error) by the Twelfth General Assembly of Iowa, approved March 24th, 1868; to which Acts, as set out in the published laws of Iowa, 1866, Chapter 144 at Page 189, and 1868, Chapter 42, at page 49, defendant hereby refers.

3. And defendant further avers that after the date of said Act of Congress, to-wit, on August 30, 1864, said McGregor Western Railroad Company, duly made and filed with the Secretary of the Interior of the United States, a map designating the route and definitely locating the line of its railroad from said South McGregor, in a westerly direction, by the prescribed route, to a connection or intersection, in O'Brien County, with the line of said other railroad, as required by said Act:

4. This defendant admits that said McGregor Western Railroad Company thereafter failed to comply with all the terms and conditions of said Act of Congress and thereby forfeited its right to the benefit of said land grant; and further admits that on February 27th, 1868, the Twelfth General Assembly of the State of Iowa passed an Act, entitled, "An Act to Resume all the Lands and Rights Conferred upon the
17 McGregor Western Railroad Company by or under an Act of Congress, approved May 12, 1864," which Act is contained in Chapter 16 at page 20 of the published session laws of 1868, as stated by Complainant.

5. This defendant admits that thereafter, on March 31, 1868, said Twelfth General Assembly of the State of Iowa passed an Act entitled "An Act Making a Grant of Land to the McGregor & Sioux City Railway Company, or, in Case of their Failure to Accept the Same, to the Forty-third Parallel Company, and to execute the Trust Conferred by Act of Congress, entitled 'An Act for a Grant of Land to the State of Iowa, in Alternate Sections, to Aid in the Construction of a Railroad in said State' approved May 12, 1864," which Act is contained in Chapter 58 at page 67 of published Session Laws of 1868, as stated by complainant.

6. And defendant avers that said McGregor & Sioux City Railway Company duly accepted the terms and conditions of said Act of March 31, 1868, and at the same time procured and filed the written waiver, surrender and release of said McGregor Western Railroad Company, as required by said Acts; that said last named Company had previously constructed the line of railroad from South McGregor, to Calmar, Iowa, upon

the designated route, and said road was thereafter continued and built from Calmar to Algona, in Kossuth County, Iowa, by said McGregor & Sioux City Railway Company, which last Company changed its corporate name, on October 7, 1869 to McGregor & Missouri River Railway Company.

7. That said Companies had, from time to time, severally sold and conveyed the completed portions of said railroad, built, acquired and owned by them respectively to the Milwaukee & St. Paul Railway Company (a corporation of the State of Wisconsin) so that on February 1, 1870, said last named Company owned and operated the entire line of road from South McGregor to Algona, Iowa; and afterwards,
18 on February 7th, 1874, said last Company duly changed its corporate name to Chicago, Milwaukee & St. Paul Railway Company, under which latter name it continued to own and operate said road.

8. This defendant admits that said McGregor & Sioux City Railway Company (afterwards named McGregor & Missouri River Railway Company), failed to comply with all the terms and conditions of said Iowa Act of March 31, 1868; and further admits that afterwards, on February 27th, A. D. 1878, the Seventeenth General Assembly of said State of Iowa, duly passed an Act entitled, "An Act in Relation to The Lands granted to the State of Iowa by Act of Congress, Entitled, 'An Act for a [Grand] of Lands to the State of Iowa, in Alternate Sections, to Aid in the Construction of a Railroad in said State', Approved May 12, 1864. And to Grant and [Improse] upon the Chicago, Milwaukee & St. Paul Railway Company, the Powers and Liabilities Mentioned in Chapter Four (4) Title Ten (10) of the Code, which Act is contained in Chapter 21 at page 18 of the published Session Laws of 1878, as stated by Complainant, and to the whole of which act this defendant expressly refers, as a part hereof.

9. And this defendant avers and says, that in and by said Act of February 27, 1878, the State of Iowa absolutely and entirely resumed all lands and rights to lands heretofore granted to said McGregor & Sioux City Railway Company, by reason of its failure to comply with the provisions of said former Act of March 31, 1868; and granted to and conferred upon said Chicago, Milwaukee & St. Paul Railway Company (defendant herein) all such lands and rights to lands, mentioned in and contemplated by said Act of Congress, approved May 12, 1864, upon the express condition, among others, that said last named Company should extend and build said railroad from its then terminus at Algona in Kossuth County, via, Emmetsburg, to

Spencer in Clay County on or before January 1, 1879; and thence on the most direct and practicable route to a
19 point of connection with the Sioux City & St. Paul Railroad (the other road referred to in said Act of Congress) within one-half mile of the corporate limits of Sheldon, in O'Brien County, Iowa, on or before January 1, 1880.

Said Act further provided that when said railroad was built and constructed to Spencer, the Governor of Iowa should then patent and transfer to said Chicago, Milwaukee & St. Paul Railway Company all lands and rights to lands, and all interests and claims therein, mentioned in said Act, and lying east of said point and co-terminus with the completed portion of said road; and when said railroad was built and constructed to said point of connection in O'Brien County, he should thereupon patent and transfer to said company all the remaining lands belonging to or embraced in said grant, which by the terms of said Act of Congress appertain to their line of road.

10 And defendant avers that it duly accepted the terms and conditions of said Act, and filed its Bond as therein required, and built and completed its said railroad, and located and established its depots, within the times and places, and in the manner provided by said Acts, and in all respects complied with and carried out the provisions thereof, to the satisfaction of said State of Iowa, and to the express approval of the Department of the Interior; and that it thereupon became and was entitled to the full benefits of said Act, and to the lands, rights and privileges therein conferred upon it.

11. This defendant further avers and says that afterwards, on April 12, 1880, the United States, by its proper officials, in recognition of the rights of that Company, duly patented and conveyed to the State of Iowa, for the express benefit of said Chicago, Milwaukee & St. Paul Railway Company,
20 under said Act of May 12, 1864, the following described lands situated in Dickinson County, Iowa, to-wit:

		Sec.	Twp.	N. Range	Acres.
1.	E 1/2 of S. W. 1/4	27	98	" 38	80.
2.	N. W. 1/4 of S. W. 1/4	27	98	" 38	40.
3.	N. W. 1/4 of N. W. 1/4	35	98	" 36	40.
4.	S. E. 1/4 of S. W. 1/4	33	98	" 36	40
5.	N. W. 1/4 of S. E. 1/4	29	98	" 36	40
6.	N. E. 1/4 of S. W. 1/4	29	98	" 36	40.
7.	N. W. 1/4 of N. W. 1/4	33	98	" 35	40.
				Total Acres	320

And that thereafter, to-wit, on April 26, 1880 said State of Iowa in like recognition of the rights of that Company, duly

patented and conveyed unto said Chicago, Milwaukee & St. Paul Railway Company, the same lands, above described, which are included within the lands set out in Exhibit "A" of Complainant's Bill herein.

12. That afterwards on October 12, 1880, the United States, by its proper officials, in further recognition of the rights of that Company also duly patented and conveyed to the State of Iowa, for the benefit of said Chicago Milwaukee & St. Paul Railway Company, under said Act of May 12, 1864, the following described lands, situated in Kossuth and Palo Alto Counties, Iowa, to-wit:

		Section	Twp. North	Range	Acres
1.	N. 1/2 ofN. E. 1/4	5	95 "	27	104.67
2.	N. E. 1/4 of N. E. 1/4 and S. E. 1/4 of S. W. 1/4	9	95 "	27	80
3.	N. W. 1/4 of N. E. 1/4	15	95 "	27	40
4.	S. W. 1/4 of N. E. 1/4	19	95 "	27	40
5.	S. E. 1/of S. W. 1/4	1	96 "	27	40
6.	N. E. 1/4 of S. E. 1/4	9	96 "	27	40
7.	S. 1/2 of S. W. 1/4	17	96 "	27	80
8.	S. E. 1/4 of N. W. 1/4	25	96 "	27	40
9.	S. E. 1/4 of S. E. 1/4	1	97 "	27	40
10.	N. W. 1/4 of S. W. 1/4 and S. W. 1/4 of S. E. 1/4	5	97 "	27	80
11.	N. W. 1/4 of N. E. 1/4 and S. E. 1/4 of N. E. 1/4	9	97 "	27	80
12.	N. 1/2 of N. E. 1/4 and N. 1/2 of N. W. 1/4	11	97 "	27	160
13.	S. E. 1/4 of N. W. 1/4	13	97 "	27	40
14.	E. 1/2 of S. W. 1/4	21	97 "	27	80
15.	N. E. 1/4 of N. W. 1/4	33	97 "	27	40
16.	S. W. 1/4 of N. E. 1/4	33	98 "	27	40
17.	N. W. 1/4 of N. E. 1/4	35	98 "	27	40
18.	N. W. 1/4 of S. W. 1/4	3	96 "	28	40
19.	S. 1/2 of S. W. 1/4 and N. W. 1/4 of S. E. 1/4	13	96 "	28	120
20.	N. W. 1/4 of N. W. 1/4	25	96 "	28	40
21.	S. E. 1/4 of N. W. 1/4 and N. W. 1/4 of S. E. 1/4	5	97 "	28	80

22.	S. E. 1/4 of N. W. 1/4	9	97	"	28	40
23.	N. 1/2 of S. E. 1/4	25	97	"	28	80
24.	N. W. 1/4 of S. E. 1/4 and S. W. 1/4 of S. W. 1/4	5	94	"	29	80
25.	S. 1/2 of S. W. 1/4	33	98	"	28	80
26.	N. E. 1/4 of N. W. 1/4	7	94	"	29	40
27.	N. W. 1/4 of N. E. 1/4	13	96	"	29	40
28.	N. E. 1/4 of S. W. 1/4	11	97	"	29	40
29.	N. W. 1/4 of N. W. 1/4 and S. E. 1/4 of N. W. 1/4	29	97	"	29	80
30.	S. E. 1/4 of S. E. 1/4	5	95	"	30	40
31.	S. W. 1/4 of S. W. 1/4	15	95	"	30	40
32.	N. E. 1/4 of S. E. 1/4	17	95	"	30	40
33.	S. E. 1/4 of S. E. 1/4	25	95	"	30	40

		Section	Twp. North	Range	Acres
34.	W. 1/2 of N. W. 1/4				
22	and				
	S. E. 1/4 of S. W. 1/4	27	95	" 30	120.
35.	N. E. 1/4 of N. W. 1/4	33	95	" 30	40.
36.	N. 1/2 of N. E. 1/4	1	96	" 30	67.81
37.	N. W. 1/4 of S. E. 1/4	15	96	" 30	40.
38.	N. W. 1/4 of N. E. 1/4	17	96	" 30	40.
39.	S. W. 1/4 of N. E. 1/4 and E 1/2 of S. W. 1/4	33	96	" 30	120.
40.	N. W. of N. E. 1/4 and N. E. 1/4 of N. W. 1/4	21	97	" 30	80.
41.	N. E. 1/4 of N. E. 1/4	25	97	" 30	40.
42.	N. W. 1/4 of S. W. 1/4	31	97	" 30	37.89
43.	S. E. 1/4 of N. E. 1/4	35	97	" 30	40.
44.	S. E. 1/4 of S. E. 1/4	7	96	" 31	40.
45.	S. 1/2 of S. E. 1/4	13	97	" 31	80.
46.	W. 1/2 of N. W. 1/4 and N. W. 1/4 of S. W. 1/4	19	97	" 31	104.44
47.	N. E. 1/4 of N. E. 1/4 and N. E. 1/4 of S. W. 1/4	23	97	" 31	80.
48.	S. E. 1/4 of N. W. 1/4 N. E. 1/4 of S. W. 1/4 N. W. 1/4 of S. E. 1/4	25	97	" 31	120.
49.	S. W. 1/4 of N. W. 1/4	29	97	" 31	40.
50.	N. E. 1/4 of S. E. 1/4	31	97	" 31	40.

51.	N. W. ¼ of N. W. ¼	35	97	"	31	40.
52.	E. ½ of S. E. ¼	19	94	"	32	80.
53.	N. E. ¼ of S. W. ¼ and S. W. ¼ of S. W. ¼	11	96	"	32	80.
54.	S. W. ¼ of N. W. ¼	23	96	"	32	40.
55.	N. ½ of N. E. ¼ N. E. ¼ of N. W. ¼ S. W. ¼ of N. W. ¼	25	96	"	32	160.
56.	S. W. ¼ of S. W. ¼	13	97	"	32	40.
57.	S ½ of S. W. ¼	25	97	"	32	80.
58.	E. ½ of N. E. ¼	35	97	"	32	80.
59.	N. W. ¼ of N. W. ¼	23	94	"	33	40.

Total acres 3,754.81

And that thereafter to-wit on February 15, 1881, said State of Iowa in like further recognition of the rights of that company, also duly patented and conveyed unto said Chicago, Milwaukee & St. Paul Railway Company, the same lands, above described as inuring to it under said acts and grants, which are included within the lands set out in Exhibit "A" of Complainant's Bill herein.

13. That all the lands mentioned in paragraphs 11 and 12 hereof, were in alternate sections designated by odd numbers, and within ten sections in width on each side of the said railroad as originally located and platted on August 30, 1864, and as afterwards constructed; and the same were embraced within the provisions of said Act of Congress of May 12, 1864, and said Act of Iowa of February 27, 1878.

14. That the above described lands comprise all the tracts mentioned in Complainant's Exhibit "A" except the
N. W. ¼ Section 11, Twp. 96, North Range 28, Acres 160.
N. W. ¼ of N. E. ¼ Sec. 11, Twp. 96, North Range 28, Acres 40

Total acres 200

which lie in Kossuth County, Iowa, and were patented by the United States to the State of Iowa, on January 15, 1874, for the benefit of the McGregor & Missouri River Railway Company, and afterwards, on December 9, 1878, were patented by said State of Iowa to said last named railroad company, under said Act of Congress of May 12, 1864; And this defendant avers that it never had any title to or interest in said two tracts of land ([comprisons] 200 acres) or the proceeds thereof, but it alleges upon information and belief, that the same were
24 afterwards sold and deeded to bona fide purchasers by said patentee, and the entire consideration was received and retained by said McGregor Company.

15. This defendant admits that in the year 1864, there was duly filed with the Secretary of the Interior, to-wit, in the office of the Commissioner of the General Land Office, a map of definite location of said railroad, designating its line in the State of Iowa, from a point in South McGregor, Clayton County, Westerly on or near the forty-third parallel of north latitude; to a point in O'Brien County, as stated by complainant; which is the same map or plat mentioned in paragraph three of this answer, and upon which route said land grant was afterwards adjusted and made, as aforesaid. But it avers that the map of 1869 also mentioned in Complainant's Bill, was simply a relocation, by said McGregor & Sioux City Railway Company, of that portion of said original line of railroad extending westward from the east line of Clayton County, Iowa, to the point of junction in O'Brien County with the Sioux City & St. Paul Railroad, and was made necessary by a subsequent change of the latter road's line in said O'Brien County; and that such re-location map of 1869 was made by direction of the then Commissioner of the General Land Office, and does not in any way concern or affect the lands in question in this suit.

16. This defendant denies that at the date of the definite location of said railroad, now known as the Chicago, Milwaukee & St. Paul Railway, all, or any portion, of the lands mentioned in Complainant's Exhibit "A" (so situated within the ten miles limits of said Government grant to the State of Iowa to aid in the construction of said road), were covered by existing claims of record in the office of the Commissioner of the General Land Office, consisting of homestead entries, pre-emption declaratory statements, or warrant locations, which were then pending before the Department of the Interior for adjudication as averred in Complainant's Bill; and it specifically denies that said lands or any of them, were excepted from the operation of said grant of Congress of May 12, 1864, as charged; but upon the contrary, it avers that all said lands were, in fact and law, subject to the operation of said act, and that title thereto duly passed to this defendant as aforesaid.

17. Further answering, this defendant admits that at the date of the definite location of said railroad, to-wit, on August 30th, 1864, all the lands mentioned and described in Complainant's Exhibit "A" purported to have been selected and claimed on behalf of the State of Iowa, as swamp and overflowed lands, unfit for cultivation under the supposed authority of an Act of Congress, approved September 28th, 1850, and entitled, "An Act to Enable the State of Arkansas and Other States to Reclaim the Swamp Lands within Their Limits." But defendant

avers that such alleged selections had been examined and rejected by the Department of the Interior, prior to said August 30, 1864; and the same were never afterwards approved or confirmed. That thereafter the Congress of the United States duly passed an act entitled, "An Act for the Relief of Lucas, O'Brien, Dickinson, and Other Counties in the State of Iowa," approved March 5, 1872, and set out in Vol. 17 of the United States Statutes-at-Large, at page 37, authorizing and requiring the Commissioner of the General Land Office to receive and examine the selections of the swamp lands in Lucas, O'Brien, Dickinson and such other counties in the State of Iowa as formerly presented their selections to the Surveyor General of the District including that state, and allow or disallow said selections, and indemnity provided for, according to the Acts of Congress in force, touching the same, at the time such selections were made; to which act express reference is here made; and defendant further avers that in pursuance of said act the said Commissioner of the General Land Office did so receive and examine said alleged state swamp selections in Dickinson, Kossuth and Palo Alto Counties, Iowa, including the lands described in Complainant's Exhibit "A" herein and re-
26 jected the same, to-wit on May 31, 1876, as to said lands in Dickinson County mentioned in paragraph Eleven (11) and on October 21, 1876, as to said lands mentioned in paragraph twelve (12) of this answer, and that such rejection were final, and have never been set aside or annulled in any manner.

18. And this defendant further avers and says that said State of Iowa, and said several Counties thereof, accepted and acquiesced in such rejection, and thereafter abandoned their alleged swamp selections of said lands, and have never since asserted rights thereto. But, upon the contrary, said state thereafter accepted and took patents from the United States for all of said lands, for the express benefit of this defendant, under said Act of May 12, 1864, and then duly patented and conveyed the same lands, to-wit, those set out in paragraphs 11 and 12 hereof, to this defendant Chicago, Milwaukee & St. Paul Railway Company, as hereinbefore stated, and thus and thereby expressly recognized the sole right of this defendant thereto, and forever estopped itself, and said several Counties from afterwards asserting any right or claim to the lands in controversy herein.

19. This defendant specifically denies that the officers of the Interior Department erroneously, in-advertently or improvidently issued patents of the United States to the State of Iowa, for all or any of the lands described in Exhibit "A" of Complainant's Bill, under any erroneous supposition whatever; and

further denies that such patents were received and accepted by said state, or that it afterwards patented any of said lands to this defendant, under the same or any other error or mistake, as charged by Complainant.

20. This defendant admits that all the lands set out in paragraphs Eleven (11) and Twelve (12) of this Answer, were sold and conveyed by this defendant to numerous bona
27 fide purchasers, prior to [to] March 2, 1896; and admits that said purchasers bought such lands in good faith and for value, without notice or knowledge of any alleged claims or rights of the United [Srares] or of individuals; But it again avers that it did not sell or convey any of the lands described in paragraph Fourteen (14) hereof, and never received or held title to such lands.

21. This defendant admits the passage of the Act of Congress approved March 2, 1896, entitled "An Act to Provide for the Extension of Time Within Which Suits may be Brought to Vacate and Annul, Land Patents and for Other Purposes," and contained in Vol. 29 U. S. Statutes at large at page 42; admits that said Act duly confirmed in such bona fide purchasers their respective rights and titles to the lands in controversy, which had been so sold and conveyed to them by this defendant as aforesaid; and further admits that the value of said tracts of land exceeded the sum of two dollars and fifty cents (2.50) per acre, at the time of the respective sales, and that this defendant received the proceeds of said sales; But it specifically denies that it holds such proceeds in trust for Complainant, as charged in said Bill.

22. This defendant further admits and says that on or about February 8th, 1897, it duly made and furnished to the Department of the Interior, in compliance with its request therefor, a written statement under oath, showing the several sales and conveyances so made by it to bona fide purchasers of all the lands in controversy herein; and it avers that afterwards, to-wit, On October 21st, 1898, the Secretary of the Interior duly accepted such statement and proofs as sufficient, and satisfactory to that Department, and held that the titles of all said purchasers were confirmed in them, respectively, under the terms of said Act of Congress of March 2nd, 1896; and said Secretary thereupon directed the Commissioner of the General Land Office to make demand upon this defendant, under said Act, for the minimum Government price of said lands to which title had been so confirmed, to-wit; for the sum of One
28 Dollar and Twenty five cents per acre, as the value of said lands; that said Commissioner of the General Land Office, disregarding said instructions and said Act of 1896,

afterwards, to-wit, on October 31st, 1898, in writing demanded of this defendant, that it pay over to the United States, the sum of Two Dollars and Fifty cents per acre for said lands, which is the same demand alleged in Complainant's Bill, and the only money demand made upon this defendant; and defendant admits that it has never complied therewith.

23. This defendant admits the passage of the Act of Congress approved March 3, 1887, and of the Amendatory Act approved February 12, 1896 as stated by Complainant; and also admits that on or about August 19, 1892 a demand was made upon it, by direction of the Secretary of the Interior, for the re-conveyance to the United States of all the lands claimed to have been erroneously patented to it, as aforesaid; which demand was not complied with by defendant. But it avers that no action was begun under said last Acts, to cancel the patents issued to this defendant for the lands now in controversy and to restore the title thereof to the United States; and it respectfully submits that said Acts do not apply to or concern this suit, under the facts charged in Complainant's Bill, especially in view of the fourth section of said Act of [Marcj] 3, 1887, and the provisions of the later act of March 2, 1896.

24. But if this Court should hold otherwise, then defendant avers and says that in and by section One (1) of said Act of Congress approved March 2, 1896, and set out by express reference in Complainant Bill, it was provided, among other things, "that suits by the United States to vacate and annul any patent to lands heretofore erroneously issued under a railroad or wagon road grant, shall only be brought within five years from the passage of this act." That, as it is advised, this suit necessarily requires a decree by this Honorable Court holding that the patents heretofore issued by the United
29 States to the State of Iowa, and the patents thereupon issued by said State of Iowa to this defendant, for the lands now in controversy, were and are null and void as to it, before the accounting and specific relief prayed for by Complainant could be granted in this suit; That this suit was not begun within five years from and after the passage of said Act, as required by the terms thereof, and defendant therefore submits that it cannot now be brought or maintained, by reason of such lapse of time, to obtain the relief demanded.

25. Further answering, this defendant avers and shows that it did not at any time receive from the United States, either directly or through the State of Iowa, its full quota of lands to which it was legally entitled under the terms of said Act of Congress of May 12, 1864; That such deficiency was more than the total acreage of lands in controversy in this suit,

and that other unclaimed public lands, within the 20 mile deficiency limits of its said railroad, were then subject to said grant, and would have been claimed by it, and should have been certified and patented to it, to make up such deficiency had it not been for the alleged errors and action of the Interior Department of the United States, as claimed in Complainant's Bill; but that all such other lands are now sold or disposed of by the Government, and cannot be claimed by or patented to your defendant. And it therefore submits, also, that Complainant ought now to be precluded, in a court of equity, from seeking to take advantage of its own alleged errors, to the great prejudice and irreparable damage of this defendant.

26. Further answering, this defendant shows, that in and by Sections two and three of said Act of Congress, approved March 2, 1896, it was provided in substance, that if a claim or statement should be presented to the Secretary of the Interior, by or on behalf of any person or corporation claiming to be bona fide purchasers from or through the original patentee or corporation to which patent had been issued for any lands erroneously patented or certified, at any time prior to the institution of suit by the Government to cancel said patents, such claim of claims should be investigated by that Department, and if it should appear that such persons or corporations were bona fide purchasers as aforesaid, then no suit should be instituted and the title of said claimant or claimants should stand confirmed, but that the Secretary of the Interior should thereupon request that suit be brought in such case against the patentee, or corporation, company or person for whose benefit the patent was issued, or certification made, for the value of said land, "which in no case shall be more than the minimum Government price thereof": as will more fully appear by reference to said Act itself, as contained in Vol. 29 U. S. Statutes at Large, at page 42 thereof. And defendant avers that the statements and [proffs] of all the sales and conveyances of the lands in controversy herein, and of the bona fides of the respective purchasers thereof, as set out in paragraph 22 of this Answer were so made by this defendant in behalf of said several purchasers, as well as for itself, [in behalf of said several purchasers, as well as for itself,] and the same were so received, accepted and approved by said Secretary of the Interior. Wherefore defendant insists that in no event can Complainant recover in this suit (if anything) more than the minimum Government price for said lands, which it avers to be One Dollar and Twenty Five cents per acre; but it denies that Complainant is entitled to any relief in the premises.

27. This defendant denies that the determination of Com-

plainant's right involves the interpretation and construction of any contracts executed by it, or the establishment and enforcement of a trust in or lien upon the proceeds of any contracts or sales, or involves any accounting from it or ascertaining what lands have been sold or contracted, or the parties, prices, payments, or good faith thereof, as alleged; but it avers that all the facts and information specifically called for by Complainant have heretofore been furnished to it, under
31 oath, by this defendant, as fully as lies within its power, and that the same were then accepted, as sufficient, and are still in complainant's possession; that, if required to answer said interrogatories, this defendant could only repeat, at great labor and expense, the same statement and facts heretofore given to Complainant, as admitted by its Bill and as set out in this Answer; and defendant respectfully submits that the matters called for are wholly immaterial to this action, and that it ought not to be required to answer them herein.

And having thus fully made answer to said Bill, this defendant prays to be hence dismissed, with its costs in this behalf.

CHARLES B. KEELER and W. J. KNIGHT,
Solicitors for Defendant.

Endorsed: Circuit Court U. S., N. D. Iowa; United States vs C. M. & St. Ry. Co: Answer; Filed August 3, 1903 A. J. VanDuzee, Clerk.

32 And afterwards to-wit on the 26th day of September 1903 there was filed in the office of the Clerk of said Court, in this cause, a Replication to Answer of Defendant, which is in words and figures following to-wit:

In the Circuit Court of the United States for Northern District of Iowa Eighth Circuit. December Term 1903.

United States of America Plaintiff
vs. In Equity
The Chicago Milwaukee & St.. Paul Railway Company Defendant.

The Replication of The United States, Complainant to the Answer of the said Railway Company, defendant;

And now comes the said complainant saving and reserving all rights of exception to the manifold defects and insufficiencies of said answer, for replication thereunto denies each and every allegation therein contained and calls for proof of the same and prays as in said Bill set forth.

UNITED STATES OF AMERICA.
H. G. McMILLAN, U. S. Atty.,
By George Crane, Asst. U. S. Attorney.

Endorsed: United States of America vs. Chicago, Milwaukee & St. Paul Railway Company; Replication; Filed September 26th 1903 A. J. VanDuze Clerk. H. G. McMillan; George Crane, Attorneys for complainant.

33 And afterwards, to-wit on the 28th day of October 1905 there was filed in the office of the Clerk of said Court in this cause a Stipulation of Facts, which is in words and figures following, to-wit:—

In the Circuit Court of the United States for the Northern District of Iowa.

Dubuque Division.

United States of America Complainant
vs. In Equity.
Chicago, Milwaukee & St. Paul Railway Company Defendant.

Stipulation of Facts.

The parties to this suit hereby stipulate and agree as follows:

1. That at any trial or hearing of said cause, or on any motion or other proceeding therein, the court shall take judicial notice of all the Acts of the Legislature of the State of Iowa, and of all the Acts of the Congress of the United States, mentioned or referred to in plaintiff's Bill of Complaint, and in defendant's Answer thereto.

2. That it is agreed that the allegations contained in paragraphs numbered one (1) two (2), three (3), four (4), five (5), seven (7), eight (8) and nine (9), of said Bill of Complaint, are substantially true and correct, except, as to the word "wholly" in paragraphs 2 and 4 thereof, which is not conceded.

3. It is agreed that the allegations contained in paragraphs numbered eleven (11) twelve (12) and thirteen (13) of said Bill of Complaint are substantially true and correct, except, that it is admitted defendant never got title to, or sold, conveyed, or received the proceeds of, the two hundred acres mentioned in paragraph 14 of its Answer herein; and except further, that defendant denies it holds the proceeds of any sales in
34 trust for complainant, as charged in paragraph 13.

4. As to paragraph 14 of said Bill of Complaint, it is agreed that on August 19, 1892, a demand was duly made upon defendant, by direction of the Secretary of the Interior, and under the Act of Congress approved March 3, 1887, for the reconveyance to the United States of all the lands mentioned in complainant's bill herein, and claimed to have been erroneously patented to it; such demand was never complied with by defendant and no action or proceeding of any nature was after-

wards begun by or on behalf of complainant, under said act, to cancel the patents issued for the lands now in controversy and restore the title thereof to the United States.

4½. It is agreed that the allegations contained in paragraphs numbered 15 and 16 of said Bill of Complaint, are substantially true and correct, except that the other demand mentioned in said paragraph 16 was for only two dollars and fifty cents per acre for the lands sold by this defendant.

5. It is further stipulated and agreed by and between the parties hereto that the paragraphs numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7) eight (8), nine (9), ten (10), eleven (11), and twelve (12), of the defendant's Answer filed in this case are substantially true and correct. The patents from the United States to the State of Iowa (mentioned in paragraphs 11 and 12) were in the following form, to-wit;

"The United States of America,

To all to whom these presents may come,—Greeting:

Whereas by the Acts of Congress approved May 12th, 1864, entitled 'An Act for a grant of lands to the State of Iowa, in alternate sections, to aid in the construction of a railroad in said State' there was granted 'for the use and benefit of the McGregor Western Railroad Company for the purpose of aiding in the construction of a railroad from a point at or near the foot of Main Street, South McGregor, in said state, in a westerly direction by the most practicable route on or near the forty-third parallel of North latitude, until it shall intersect the said road running from Sioux City to the Minnesota State Line' (provided for by said Act and now known as the Sioux City and Saint Paul Railroad) 'every alternate section of land designated by odd numbers for ten sections in width on each side of said roads.'

And whereas there has been filed in this office through the Secretary of the Interior, evidence of the construction and completion of the said railroad from the City of McGregor to a junction with the said Sioux City and Saint Paul Railroad in the manner prescribed by the said Act of Congress approved May 12, 1864.

And whereas the sections and parts of sections of lands inuring in part to the said State of Iowa in aid of the construction of the said railroad, have been selected and reported to this office in accordance with the Act of Congress aforesaid, and the rules and regulations of the General Land Office, as shown by the original lists of selections dated December 21, 1878, June

19, and August 30, 1879, and duly certified December 21, 1878, July 2, and August 30, 1879, by the Register and Receiver at Des Moines, Iowa; the said tracts are particularly described as follows, to-wit:

(Here follows descriptions.)

The said tracts of land as described in the foregoing make the aggregate area of (6,774.74) six thousand seven hundred and seventy four acres, and seventy four hundredths of an acre.

Now know ye, That the United States of America, in consideration of the premises and pursuance to the said Act of Congress of May 12, 1864 Have given and Granted, and by these presents, Do Give and Grant, unto the State of Iowa, in trust for the use of the railroad company or companies, having constructed and completed the railroad from the City of McGregor aforesaid, to its junction with the said Sioux City and Saint Paul railroad, according to the provision in the act aforesaid.

36 To have and to hold the said tracts of land with the appurtenances thereof unto the said State of Iowa for the use aforesaid.

In testimony whereof, I, Rutherford B. Hayes, President of the United States, have caused these letters to be made patent, and the Seal of the General Land Office to be hereunto affixed.

Given under my hand at the City of Washington this twelfth day of October, in the year of our Lord One Thousand Eight Hundred and Eighty and of the Independence of the United States the one hundred and fifth.

[Seal] By the President,
R. B. HAYES,
By Wm. H. Cook, Secretary.

S. W. Clark, Recorder of the General Land Office."

Recorded in Vol. 7, pages 400-407 inclusive.

And that the patents from the State of Iowa to the defendant herein, (also mentioned in said paragraph 11 and 12), were in the following form, to-wit:

The State of Iowa,

To all to whom these presents shall come—Greeting:

Whereas, by the provisions of Chapter 21, of the Acts of the 17th General Assembly of the State of Iowa, certain lands

granted to said State by an Act of Congress approved May 12, 1864, were granted to and conferred upon the Chicago, Milwaukee & St. Paul Railway Company, upon certain terms and conditions, upon the compliance with which the Governor is required to patent the said lands to the said Railway Company.

And whereas, in virtue of a compliance with the terms and conditions of said Act of the General Assembly, the said Railway Company is entitled to the following lands, situated in (Named) County, Iowa, the same having been patented to the State by the United States under the aforesaid Act of Congress, to-wit:

37 (Here follows description of lands.)

Now therefore, I, John H. Gear, Governor of the State of Iowa, in consideration of the premises and in conformity with the aforesaid Act of the General Assembly, do hereby convey unto the said Chicago, Milwaukee & St. Paul Railway Company, and to their assigns, the tracts of land heretofore described, to have and to hold the same, together with all the rights, privileges, immunities and appurtenances of what-so-ever nature thereunto belonging unto the said Chicago, Milwaukee & St. Paul Railway Company, and their assigns forever.

In testimony whereof, I have caused these letters to be made patented, and the Great Seal of the State of Iowa to be hereunto affixed.

Given under my hand at Des Moines the 15th day of February 1881.

[State Seal] By the Governor,
JNO. H. GEAR,

J. A. T. Hull,
Secretary of State."

6. It is also agreed that the paragraphs [numberes] thirteen (13) fourteen (14) and fifteen (15) of defendant's answer filed in this cause are substantially true and correct, except that complainant does not admit the lands referred to in paragraph 13 were embraced within the provisions of the Act of Congress of May 12, 1864, or of the Act of Iowa of Feb. 27, 1878, as charged.

7. It is further stipulated and agreed that prior to and on August 30, 1864, none of the lands mentioned and described in Exhibit A. of complainant's Bill (including those described in paragraphs 11 [an] and 12 of defendant's answer in this cause) were covered by any homestead entry, pre-emption, declaratory statements or warrant locations, or other existing

claims of record in the office of the Commissioner of the General Land Office of the Department of the Interior of the United States save and except as follows:

38 A. That the records of said General Land Office show that on August 22, 1859, the United States Surveyor General for Iowa certified and transmitted to said Land Office a list of lands in Kossuth County, Iowa, purporting to have been selected as swamp land by William H. Ingham and George A. Lowe, acting under appointment of the county court of said county for that purpose; to their original list was attached the affidavit of said Inghram and Lowe dated November 11, 1858, and sworn to before Lewis S. Smith, County Judge, stating that they were surveyors appointed by said county court to select swamp lands in Kossuth County and that the lands mentioned in their said list were swamp lands. Said Surveyor General certified that the list so transmitted by him was a true and correct transcript from such original list of swamp land selections made by the County Surveyor or state locating agents and filed in his office. His said transcript or list was received and filed in the General Land Office on August 25, 1859.

B. That the records of said General Land Office also show that on March 27, 1860, said Surveyor General for Iowa certified and transmitted to said General Land Office, a list of lands in Palo Alto County, Iowa, purporting to have been selected as swamp lands by Andrew Hood. To the original list of said Hood was attached his affidavit dated December 17, 1859, and sworn to before James Hickey, County Judge, stating that he was disinterested, and that the lands mentioned in his said list, were swamp lands, but not showing his authority to make such selections or list. Said Surveyor General certified that the list so transmitted by him was a true and correct transcript from the original list of swamp selections made by the County Surveyor or State Locating Agent, and filed in his office. His said transcript or list was received and filed in the General Land Office April 3, 1860.

Said swamp lists mentioned in "A" and "B" above contained all the lands scheduled in paragraph 12 of defendant's answer in this cause, except the N. E. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of Sec. 23, Twp. 94, Range 32, in Palo Alto County, Iowa, which was never selected or claimed as swamp land at any time.

39 C. That the records of said General Land Office further show that on March 23, 1872, there was on file in said Land Office at Washington, a list of lands in Dickinson County, Iowa, purporting to have been selected as swamp lands, by one Benjamin F. Parmenter and to said original list

was attached an affidavit and certificate in the words and figures following, to-wit:

State of Iowa,
County of Dickinson—ss.

I, Benjamin F. Parmenter of said county having been duly appointed commissioned and authorized by the County Judge of said Dickinson County upon the first Monday of October A. D. 1857 to select and make return of the swamp and overflowed lands in said county do solemnly swear that the above returned list of selections is just and true; that I am a practical surveyor and as such have examined the lines bounding each of the tracts of land particularly designated in the foregoing list and I do further solemnly swear that the great part of each and every 40 acre tract or (other smallest legal subdivision) therein named is of the character described in the above list and is "swamp or overflowed" land of the character "embraced in the Act of Congress approved the 28th day of September A. D. 1850" and generally known as the "Swamp Land Act."

BENJAMIN F. PARMENTER.

40 State of Iowa,
County of Dickinson—ss.

This is to certify that before me Leonidas Congleton, County Judge, in and for said County of Dickinson personally came Benjamin F. Parmenter on the 23rd day of July 1860 by me commissioned and authorized to select and make return of the swamp or overflowed lands in said county as embraced in the Act of Congress approved the 28th day of September A. D. 1850, and subscribed and made oath to the foregoing affidavit. In witness whereof I have hereunto set my hand and affixed the seal of said County of Dickinson, at my office in said county this 23rd day of July A. D. 1860.

[Seal] LEONIDAS CONGLETON,
County Judge.

Said list contained all the lands mentioned and described in paragraph eleven (11) of defendant's answer in this cause. The records of the General Land Office show that said Dickinson County list was endorsed "Posted on Tract Book May 28th, 1872," and no prior record entry of any kind in regard to such selections or lists appears in said Land Office. A copy of said list was sent to the District Land office at Sioux City, Iowa, on March 23rd, 1872, from the Office of the Commissioner of said General Land Office.

8. It is further stipulated and agreed that said swamp land selections in Dickinson, Palo Alto and Kossuth Counties, Iowa,

(mentioned in paragraph 7 above) were never adopted, ratified or confirmed, in any manner by the Interior or Land Department of the Government, but remained pending and undetermined therein down to the year 1876. During that time the State of Iowa claimed said lands as being swamp and overflowed lands granted to it under and by virtue of said Act of Congress of Sept. 28, 1850, and as having been selected as such by said several counties under authority of an Act of its Legislature, approved Jan. 13, 1853; and said McGregor Western Railroad Company and said McGregor & Sioux City
41 Railway Company (afterwards McGregor and Missouri River Railway Company) successively made claim to the same lands as being neither swamp nor over-flowed in character, but as inuring to them respectively, under the Act of Congress of May 12, 1864, as place lands, within the ten mile limits of said grant, under the plat of definite location filed August 30, 1864.

That on May 31, 1876, and on October 21, 1876, the Commissioner of the General Land Office upon public hearings of the matter of such respective claims and after due notice to all parties interested, duly held and adjudged in writing that the lands in said Dickinson, Kossuth and Palo Alto Counties, Iowa, mentioned and described in complainant's Exhibit "A" and in paragraph 11 and 12 of defendant's answer in this cause, were not in fact swamp or overflowed lands, and were not of a character embraced in said Act of Congress of Sept. 28, 1850, and known as the Swamp Land Act; and that the State of Iowa and said several counties, were never entitled to said lands, or any part thereof, under said act said hearings were had pursuant to the requirements of the Act of Congress of March 5, 1872, and said findings and decisions of the commissioner were never appealed from, reversed or modified in any manner as shown by the records of said General Land Office.

9. On Nov. 13, 1865, the Governor of Iowa had certified to the Secretary of the Interior, the completion of forty miles of said railroad extending from McGregor to Calmar; and on Dec. 5, 1870, likewise certified to the completion of said road to Algona, a distance of 182.2 miles from McGregor. On Nov. 30, 1878, the Governor of Iowa also certified to the completion of said railroad from Algona in a westerly direction to Sheldon O'Brien Co., Ia. At the same time he further certified that the railroad thus constructed, "is a part of a railroad from a point at or near the foot of Main St., South McGregor, in the State of Iowa, in a westerly direction, by the most practicable route, on or near the 43 parallel of north latitude, to a point of

intersection with the road running from Sioux City to
42 the Minnesota State Line, in the County of O'Brien in said State, as contemplated in said Act of Congress approved May 12, 1864," and "that the whole of said last mentioned railroad is now completed and in running order."

10. It is further stipulated and agreed that all the lands mentioned and described in paragraphs eleven (11) and twelve (12) of defendant's Answer filed in this cause, were sold and duly conveyed by said defendant to numerous bona fide purchasers, prior to March 2nd 1896; that said purchasers bought such lands in good faith and for value, without notice or knowledge of any alleged claims or rights of the United States or of the State of Iowa therein, that on or about February 8, 1897, said defendant made and furnished to the Department of the Interior of the United States in compliance with its request therefore a written statement under oath, showing the several sales and conveyances so made by it to such bona fide purchasers, which statement was made on behalf of said purchasers as well as on behalf of said defendant; that afterwards, on October 21, 1898, the Hon. Secretary of the Interior accepted such statement and proofs as sufficient and satisfactory to that Department, and in writing held that the titles of all said purchasers in and to said lands were confirmed in them, respectively, under the terms of the Act of Congress, approved March 2nd, 1896, the said Secretary by letter of October 21, 1898, to the Commissioner of the General Land Office, thereupon directed him.

"To make demand under the statute upon said Company for the value of the lands, the title to which is herein held confirmed, as the basis of a suit against the Company in the event the demand is not complied with. For the purpose of such demand, the minimum government price thereof will be treated as the value of the lands."

That said Commissioner of the General Land Office by his letter of October 31, 1898, to defendant's President, made demand in the following language:

43 Demand is hereby made upon you as President of the Chicago, Milwaukee & St. Paul Railway Company, for the payment to the United States of Ten Thousand Two Hundred and Sixty two and two cents, the Government price at $2.50 per acre of the land, the title to which is held to affirmed in the purchasers from the company as aforesaid. You are allowed ninety days from the receipt hereof within which to make response to this demand, and unless response is made within such period, the matter will be reported to the Secretary of the Interior, in order that suit may be instituted under the Act of 1896 for the price of the lands, as stated."

It is agreed that said demand was never complied with by the defendant.

11. It is further stipulated and agreed that the defendant railway Company did not receive from the United States, either directly or through the State of Iowa, the full quota of land to which it was lawfully entitled under the term of the Act of Congress, approved May 12, 1864, and that such deficiency was very considerably more than the total acreage of all the lands in controversy in this suit.

12. It is further stipulated and agreed that on or about the 21st day of November 1850 the Commissioner of the General Land office duly instructed the United States Surveyor General for the State of Iowa to make out a list of all the lands granted to the said State by the Act of Congress approved the 28th day of September 1850, and generally known as the "Swamp Land Act" and that in his letter of instructions to said Surveyor General said Commissioner used or employed the words following, to-wit:

"The only reliable data in your possession from which these lists can be made out are the field notes of the Surveyor on file in your office and if the authorities of the state are willing to adopt these as the basis of these lists you will so regard them. If not and these authorities furnish you satisfactory evidence
that any lands are of character embraced in the grant,
44 you will report them.

13. It is further stipulated and agreed that the 40 acre tract of land described in Exhibit "A" attached to the Bill of Complaint as to the Northwest quarter of the Northwest quarter of Section 23, Town 94, Range 32, is erroneous, and that it should have been the Northwest quarter of the Northwest quarter of Section 23, Town 94, Range 33, The mistake being as to the range and that this agreed statement of facts applies to and covers the Northwest quarter of the Northwest quarter of Section 23, Township 94, Range 33, in the same manner and to the same extent as it does the other lands mentioned in paragraph 12 of defendant's answer.

14. It is agreed that this cause shall be tried and determined upon the foregoing facts.

Dated November 19, A. D. 1904.

Wm. H. Moody, Attorney General. George Crane, Asst. United States Attorney. Charles B. Keeler, and W. J. Knight. Attorneys for Railway Company.

Endorsed: United States vs. C. M. & St. P. Ry. Co., Stipulated Facts; Filed October 28, 1905 A. J. VanDuzee, Clerk.

And on the said 28th day of October 1905 there was
45 filed in this cause a "Supplemental Agreement of Facts to be added to and considered with former Stipulation which is dated Nov. 19, 1904,"—which is in words and figures following, to-wit:

In the United States Circuit Court, Northern District of Iowa.
Eastern Division.

United States of America, Complainant.
vs.
Chicago, Milwaukee & St. Paul Railway Company, Defendant.

Supplemental Agreement of facts to be added to and Considered with former Stipulations, which is dated November 19, 1904.

14. In connection with paragraph 14 of the foregoing stipulation, aforementioned, it is further agreed that on the 23rd day of June 1860 said Commissioner of the General Land Office sent to the Surveyor General of the United States for the State of Iowa, the following letter and form, to-wit:

General Land Office
June 23, 1860.

Warner Lewis, Esq.,
Surveyor General, Dubuque, Iowa;—

Sir:

Referring to your letter of the 15th inst., asking to be advised as to your duty in reporting swamp selections in Iowa, and in view of the act of the 12th of March last, a copy of which was furnished you in my letter of the 21st ult., I will here set forth the principles which you are to apply to any selections now on your files and to all others, also, which may hereafter
46 be reported to you by the agents of the State.

1st. As the grant contemplates the inundation of extensive regions of country by such natural arteries as the Mississippi River, the lands evidently intended to be granted as swamp are those only which, by reason of their swampy character, and liability to overflow, are worthless in their natural condition, and whereon crops cannot be raised without reclamation by levees and drains. An overflow or inundation from casual cause, merely temporary in its effects, does not bring the land within the grant, and cannot be said, in any proper sense, to render them "unfit for cultivation." The law contemplates such long continued overflow or freshets only, as would totally destroy crops, and prevent the raising of them without artificial means by [levess] &c., such as are found on the Mississippi River.

2nd. Bodies of land covered by shallow lakes or ponds, which may become dry by evaporation, or other natural causes, do not come within the meaning of the swamp grant.

3rd. Testimony now, after the lapse of nine years, to be available, must be explicit, resting upon the personal and exact knowledge of the localities claimed, and must relate to each quarter, quarter section, or other equivalent legal subdivision. This testimony must be made by parties having no interest, present or prospective, direct or indirect, and must state the name of the river or water course whereby the lands are submerged and rendered useless for arable purposes in their natural condition.

4th. I enclose herewith a blank form of proof which you will require from the state authorities, and if lists of lands of this class are furnished you, accompanied with such evidence, you will report them to this office, in the manner set forth in form "B" herewith, after making a careful examination of said proof, and rendering your own decision thereon, as to whether the several tracts are swamp or not, within the meaning of the grant.

47 5th. You will, as soon as your report is arranged and prepared for transmission to this office, send simultaneously a copy thereof to the local offices of the proper land districts, with instructions to them to enter the tracts in the usual form in their books, and to withhold them from sale or other disposition, unless otherwise especially directed by this office. Be pleased to acknowledge the receipt thereof.

Very respectfully, your obedient serv't.,
JOS. S. WILSON, Commissioner."

Form.

State of Iowa,
County of

I, ... Agent for the State of Iowa, duly appointed under an act of the Legislature thereof, to select the swamp and overflowed lands within the County of ..... being duly sworn, depose and say; That I am well acquainted with the mode and manner of surveying and marking the public lands; that I have made a personal examination on the ground of each of the several tracts herein described, to-wit:

(Here insert list of lands.)

And from such personal examination on the ground, have

ascertained and know, and hereby make oath, that the greater part of each one of the quarter, quarter sections of the foregoing tracts is "swamp and overflowed lands made unfit thereby for cultivation," and is in fact "unfit for cultivation" without necessary levees and drains to reclaim the same; that they are made such by reason of the overflowing, (Here give the name of river, the cause of the overflow) in such a manner that no crops can be raised thereon, by reason of its overflowed and [swampt] condition; that they are not shallow lakes or ponds which by natural causes may become dry. And that such was the character thereon on the 28th day of September 1850, the day of the passage of the grant; that I have ascertained from the records of the local land office, at .....

48 that they are vacant public lands, and are not in the granted section within the six mile limits of any grant made by the General Government to the State of Iowa for railroad purposes, nor embraced in any list of lands within the six and fifteen mile limits of such grants, heretofore approved by the Secretary of the Interior, and certified to the State by the Commissioner of the General Land Office; and further, that I have no interest, direct or indirect, present or prospective, in the issue or in any parcel of land herein described.

.....,

Subscribed and sworn to before me this .....day of .... 186 .

..... J. P.

It is further agreed that the said Surveyor General afterwards made no further report relating to swamp land selections in Kossuth or Palo Alto County Iowa, as required by the fourth and fifth paragraph of said letter of June 23, 1860, and that he gave no instructions to any local offices or land districts, as contemplated in the 5th section of said letter.

15. The facts stated in paragraphs 12 and 14 in the prior stipulation, are admitted, subject to the rights of either party to make any objection, proper to be made, to the consideration of the same or any part thereof, in the case, because of incompetency, irrelevancy or immateriality.

16. Nothing in any stipulation of facts shall be taken to deprive either party of the benefit of any admissions made in the pleadings of which it may desire to avail itself.

17. That all of paragraph 8 of the foregoing original stipulation, from the commencement of said paragraph down to and including the words "State of Iowa, claimed" be stricken out and the following be substituted in its stead.

49 "It is further stipulated and agreed that said swamp land selections in Dickinson, Palo Alto, and Kossuth Counties Iowa, (mentioned in paragraph 7 of the original stipulation) were never adopted, ratified or confirmed in any manner by the Interior or Land Department of the Government, but on the 13th day of June 1862, J. M. Edmunds Commissioner of the United States General Land Office, signed and sent to the Governor of the State of Iowa, a communication in words and figures as follows.

General Land Office, June 30, 1862,

His Excellency,
The Governor of Iowa, Des Moines, Iowa;

Sir; On the 9th ult., and 12th inst., two reports for cash indemnity under Act of 2nd of March 1855, for Swamp Lands in Louisa and Fremont Counties, respectively, were submitted to the Hon. Secretary of the Interior, for his approval of the decision made thereon as required by law, if satisfactory to him. These cases were returned on the 27th inst., with a communication of the same date, referring to his letter of the 25th April last, upon which the instructions of the 31st ult., addressed to you, were based.

The Secretary has made a re-examination of the subject, and has decided that the proof submitted is insufficient.

He says; "On the 25th of April last, in a communication to the Commissioner of the General Land Office, from this Department, a construction was given to the Act of Congress of March 2nd, 1855. According to the views then expressed, the proof furnished in the cases now under consideration, is entirely insufficient. No court of justice would be justified in the passing the title to the most insignificant piece of property, upon such evidence."

"Recurring to the communication of the 25th of April. The fact that these lands have been entered, is prima facie evidence that they are not swamp and 'unfit for cultivation,' and
50 if they have since been cultivated, and without having been reclaimed by a systematic process of embankment and ditching, there can be no claim against the government on account of the sale of such land."

"Each tract alleged to be swamp lands, must be described by witnesses, who can swear that they are acquainted with it, and if they say it is swamp, they must give such reasons for their statement that will convince the Commissioner of the General Land Office that they are correct in their conclusion. It is perfectly easy to describe these lands, no different whether they are

made swamp by being upon the low margins of overflowed rivers, upon the borders of marshy lakes, natural swamp lands, overflowed by beaver dams, or lost creeks; all are alike within the act, thereby rendered unfit for cultivation without the aid of artificial means. It will readily occur to any one who shall attempt to make the proof, that by describing and giving the names of the timber shrubs or plants found growing upon the lands alleged to be swamp, will in most cases go far to determine their character.

"But lands covered by temporary shallow ponds, existing only in times of flood and storms, are not swamp lands. They must be so described that the Commissioner of the General Land Office can judge whether the lands are so permanently swamp or overflowed, that they are absolutely unfit for cultivation, and that can be easily determined, if the reasons and causes which it is supposed to make the lands swamp, are set out. It is known to every one of common observation that many prairie lands in their wild state, are covered with ponds, and timber lands with water, for a considerable portion of the year, but when cleared and tilled, become dry without ditches or levees. What is sought to be impressed is, that unless the proof shows affirmatively that the lands are swamp, the claim must be rejected.

"A stereotyped form of proof will not answer. The topography of the country adjacent to the tract should be described, and if it is found to be situated upon the margin of a river with low banks, or on the borders of a marshy lake, you will have the less difficulty in determining the question, but if it is found to be in a region where there is no apparent reason to cause
51 them to be swamp or overflowed, the proof should be more circumstantial, and the condition of the lands should be described for a considerable length of time, that you may be sure that the overflow is not temporary.

"The certificate of the Register and Receiver of the District in which the lands are situated, amounts to nothing at all. It is no part of their duty, and it is suggested that they be directed to take no part in the matter, unless they shall be called upon by the commissioner for information, for the purpose of detecting errors.

"I have therefore, to state the following as the requirements of this office in presenting claims for indemnity.

1st. Testimony in support of such indemnity awards must be the affidavits of at least two disinterested and respectable persons, who have a personal and exact knowledge of the character of the land claimed, in its smallest legal sub-

division, as it existed at the date of the swamp grant of Sept. 28, 1850, which affidavits must state the cause of swamp or overflow, designating the proportion of each tract that is claimed to be swamp, and unfit for cultivation in its natural condition, with a description of the timber, the names thereof, and the shrubs, or plants growing on the land, the character and extent of the means employed in levees, embankments, or drains, in order to make the land purchased as arable, really inhabitable as such, the contiguity of the land to rivers, water courses, or lakes, with a general description of the surrounding tracts, whether the lake is subject to overflow, and at what seasons and extent, and whether by removal of the timber or by plowing, the water disappears without ditching or draining.

2nd. The proof should be the affidavit of the person who purchased the land of the United States, and also the affidavit of the present occupant. Where the original purchaser is not resident of the state or had no knowledge of the character of land in 1850, or at the date of purchase or where the occupant is in like manner uninformed, or the tract is unoccupied, the facts may be established by two respectable and disin-
52 terested persons, residents nearest the land, and in such cases the State Agent must file with the testimony his own affidavit to the effect of the absence want of information of the principal witnesses, or of the non-occupancy of the land, and that the persons whose testimony is presented, are the nearest informed residents to the swamp premises, and are respectable, creditable and disinterested witnesses.

3d. The affidavits may be made before a magistrate authorized to administer oaths, or before a Notary Public, under a seal. If, by the former, his official character must be certified under seal, and the character and credibility of the witnesses must also be certified by the officer administering the oaths.

The proof in the cases herein referred to, being similar to that submitted in other cases remaining on the files of this office, the Secretary's decision will apply equally to all, and they are all therefore, rejected as insufficient.

These instructions are designed to supersede those of the 31st ult., and you will be pleased to acknowledge the receipt hereof.

With great respect, your obedient servant,

J. M. EDMUNDS, Commissioner.

That after the receipt of said letter, neither the State of Iowa nor the Counties of Dickinson, Palo Alto and Kossuth, in any manner made, presented or filed in the United States Surveyor

General's Office, or in the Land or Interior Department of the Government, any other or further claim regarding the swamp land selections mentioned in paragraph 7 of this stipulation, but continued to claim."

The remainder of said paragraph 8 to stand as it is written.

18. It is agreed that the above entitled cause shall be submitted to the court and tried upon the facts stated in the stipulation heretofore signed, dated 19th day of November, 1904, and the facts stated in this stipulation; this stipulation
53 to be regarded as a supplement to said prior stipulation.

Dated September 7, A. D. 1905.

H. G. McMILLAN, U. S. Atty.
By George Crane, Asst. U. S. Atty.

CHARLES B. KEELER, and
W. J. KNIGHT,
Attys. for C. M. & St. P. Ry. Company.

Endorsed: United States vs. C. M. & St. P. Ry Co., Supplemental Agreement of Facts; Filed Oct. 28, 1905: A. J. VanDuzee, Clerk.

54 And on the 5th and 6th days of December A. D. 1905, the following proceedings were had by said Court in said cause as appears of record on pages 266 and 267 of Record No. 5 of said Court, to-wit:

United States of America,
No. 233 vs. Equity
Chicago, Milwaukee & St. Paul Railway Company.

Now this 5th day of December A. D. 1905, the above entitled cause comes before the Court for hearing upon the pleadings, agreed statement of facts, and supplemental agreed statement of facts; complainant appears by George Crane, Esq., Assistant United States Attorney, its Counsel; and Respondent appears by Chas. B. Keller, Esq., and W. J. Knight, Esq., its counsel; thereupon the argument of counsel was begun and continued until the arrival of the hour for adjournment of Court for the day when a post-ponement was ordered until 9 o'clock to-morrow morning.

United States of America,
No. 233 vs. Equity.
Chicago, Milwaukee & St. Paul Railway Company.

Now this 6th day of December A. D. 1905, the above entitled cause again comes before the court in the hearing hereof, and the solicitors for the parties all being present, the hearing in

the cause was resumed and continued until concluded, and the cause was fully submitted to the Court, and by the Court taken under advisement.

55 And on the 4th day of December 1906 there was filed in the office of the Clerk of said Court, in this cause an Opinion of the Court which is in words and figures following, to-wit:

United States Circuit Court, Northern District of Iowa.
Eastern Division.

United States of America, Complainant,
No. 233 vs. In Equity.
The Chicago, Milwaukee & St. Paul Railway Company, Defendant.

On Final Hearing.

By this suit the United States seeks a discovery, an accounting, and to recover of the defendant under the Act of Congress of March 3, 1887, 24 Stat. 556, and of March 2, 1896, 29 Stat. 42, the value of some four thousand three hundred acres of public lands (which are particularly described in the bill of complaint) in Dickinson, Kossuth, and Palo Alto Counties, in this state, which it is alleged were, prior to said act of 1887 erroneously patented by the officers of the Interior Department to the State of Iowa for the benefit of the defendant railway company, and by said state patented to defendant, as inuring to it under the act of congress approved May 12th, 1864 13 Stat. 72, entitled, "An act for a grant of lands to the state of Iowa in alternate sections to aid in the construction of a railroad in said state,' and prior to the act of March 2nd, 1896, sold by the defendant to numerous persons who were good faith purchasers thereof for value.

By said act of May 12th, it is provided; That there is hereby granted to the state of Iowa for the benefit of the McGregor Western Railroad Company, to aid in the construction of a railroad in said State from South McGregor, in a westerly direction on or near the forty third parallel of north latitude, until it shall intersect in O'Brien County, a railroad running from Sioux City, to the Minnesota state lie, every alter-
56 nate section of land designated by odd numbers for ten sections in width on each side of said road; but in case it shall appear, when the line of said road is definitely located, that the United States have sold any section or part thereof granted as aforesaid, or that the right of preemption, or homestead settlement has attached to any of said land, or that any of the same has been reserved by the United States for any pur-

pose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected for the purposes aforesaid from the public lands of the United States, within specified limits, so much land in alternate sections, designated by odd numbers as shall be equal to such land as the United States have sold, reserved, or otherwise appropriated, or to which the right of homestead settlement or pre-emption has attached; Provided, that any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner by competent authority, for the purpose of aiding in any object of internal improvement or other purpose whatever, be and the same are hereby reserved and excepted from the operation of this act. The act further provides, that the lands granted shall be subject to the disposal of the legislature of Iowa for the purpose aforesaid, and no other, that if said McGregor Western Railway Company or assigns, shall fail to construct such road, the state of Iowa may resume said grant and so dispose of the same as to secure the completion of a road in such line, upon such terms, and within such time not exceeding fifteen years, from the acceptance [if] the grant, as it shall determine; and that all lands which by said grant shall remain to the United States within ten miles on each side of said road shall when sold, be sold for not less than double the minimum price of public lands.

It is alleged in the bill that the defendant has succeeded to the rights of the McGregor Western Railroad Company under said grant, and that at the time of the definite location of said railroad, the lands described being within ten miles of said road on either side thereof, were covered by existing claims of record in the office of the Commissioner of the
57 General Land Office, consisting of homestead entries, pre-emption declaratory statements, warrant locations, or swamp selections, which were all pending before the Department of the Interior for adjudication at the time of the attachment of rights under said railroad grant, and that said lands were therefore excepted from the operation of said grant.

The answer admits that defendant has succeeded to the rights of the McGregor Western Railroad Company, under said grant and that the lands have been patented to it as such successor, but denies that said lands, were covered by any such claims, or were excepted from the operation of the grant.

From the pleadings and stipulations of the parties it appears;

I. That the McGregor Western Railroad Company duly accepted the terms of said grant, and on August 30th, 1864 filed

in the office of the Secretary of the Interior a map of definite location of the line of its railroad along the prescribed route to a point of intersection in O'Brien county, with said railroad running from Sioux City to the state line of Minnesota, and completed a part of said road, but it and its assigns failed to comply with all of the terms of said grant; that the legislature of Iowa thereupon resumed the grant, and by Chap. 21, Acts of the 17th General Assembly of that state approved February 27th, 1878, conferred the same upon the Chicago, Milwaukee & St. Paul Railway Company, the defendant herein; that defendant accepted the grant and constructed the road to the point of intersection in O'Brien County with said road running from Sioux City, to the state line of Minnesota, within the time fixed [therfor]; that in 1880 the United States by its proper officers, in recognition of the right of the defendant to the lands embraced in said grant patented the same, including the lands described in the [bill], except two hundred acres thereof, to the state of Iowa for the benefit of the defendant, and that the state of Iowa in the years 1880 and 1881 in like recognition of defendant's right to said land duly patented the same, except said two hundred acres to the defendant as inuring to it under said act of May 12, 1864.

58 II. That about November 21st, 1850, the Commissioner of the General Land Office duly instructed the United States Surveyor General for the State of Iowa to make out lists of all the lands granted to said state by the act of Congress of September 28th, 1850, 9 Stat. 519, C. 84, the Swamp Land grant, and in his letter of instruction said; "The only reliable data in your possession from which these lists can be made, are the field notes of the surveyors on file in your office, and if the authorities of the state are willing to adopt these as the basis of these lists you will so regard them. If not, and these authorities furnish you satisfactory evidence that any lands are of the character embraced in the grant you will report them." On June 23rd, 1860, the Commissioner of the General Land Office sent to said Surveyor General for Iowa, a letter as follows:

"Sir;

Referring to your letter of the 15th inst., asking to be advised as to your duty in reporting swamp selections in Iowa, and in view of the Act of the 12th of March last, a copy of which was furnished you in my letter of the 21st ult., I will here set forth the principles which you are to apply to any selections now on your files and to all others, also, which may hereafter be reported to you by the agents of the state.

1st. As the grant contemplates the inundation of extensive

regions of country by such natural arteries as the Mississippi River, land evidently intended to be granted as swamps are those only which by reason of their swampy character and liability to overflow, are worthless in their natural condition, and whereon crops cannot be raised without reclamation by levees and drains. An overflow or inundation from casual cause merely temporary in its effect does not bring the land within the grant, and cannot be said in any proper sense to render them unfit for cultivation." The law contemplates such long continued overflow or freshets only, as would totally destroy crops and prevent the raising of them without artificial means, by levees &c. such as are found on the Mississippi river.

59 2nd. Bodies of land covered by shallow lakes or ponds which may become dry by evaporation or other natural causes do not come within the meaning of the swamp grant.

3rd. Testimony now, after the lapse of nine years, to be available, must be explicit, resting upon the personal and exact knowledge of the localities claimed, and must relate to each quarter, quarter section, or other equivalent legal subdivision. This testimony must be made by parties having no interest, present or prospective, direct or indirect, and must state the name of the river or water-course whereby the lands are submerged and rendered useless for arable purposes in their natural condition.

4th. I enclose herewith a blank form of proof which you will require from the state authorities, and if lists of lands of this class are furnished you, accompanied with such evidence, you will report them to this office, in the manner set forth in form "B" herewith, after making careful examination of said proof, and rendering your own decision thereon, as to whether the several tracts are swamp or not, within the meaning of the grant.

5th. You will as soon as your report is arranged and prepared for transmission to this office, send simultaneously a copy thereof to the local offices of the proper land districts, with instructions to them to enter the tracts in the usual form in their books, and to withhold them from sale or other disposition, unless otherwise especially directed by this office."

The form of proof enclosed in the letter appears in the record.

The Surveyor General made no further report to the Commissioner of the General Land Office as to swamp land selections in either of said counties, and gave no directions to any of the local land offices to withhold any of said lands from sale

or other disposition as required by said letter of the Commissioner.

III. That prior to and on August 30th, 1864, when the map of definite location of said road was filed in the office of the Secretary of the Interior, none of the lands described in the bill of complaint was covered by any homestead entry, pre-
60 emption declaratory statements, warrant locations or other existing claims of record in the office of the Commissioner of the General Land Office, save and except;

(a) That on August 25th, 1859, there was received and filed in that office, from the United States Surveyor General for Iowa, a certified transcript of a list of lands in Kossuth county on file in his office, including the lands described in the bill of complaint as being in that county, purporting to have been selected as swamp lands by Wm. H. Ingham, and Geo. A. Lowe, acting under appointment of the county court of said county for that purpose. To the original list is attached the affidavit of said Ingham and Lowe sworn to November 11th, 1858, before the county judge stating that they were surveyors appointed to select swamp lands in Kossuth County, and that the lands mentioned in said list were swamp lands;

(b) That on April 3rd, 1860, there was received and filed in that office, from the United States Surveyor General for Iowa, a like list of lands in Palo Alto County, on file in his office, including those described in the bill of complaint except forty acres thereof, as being in that county, purporting to have been selected as swamp lands by Andrew Hood.

The Surveyor General certifies that each of the foregoing lists transmitted by him is a correct transcript of the original list of swamp selections made by the county surveyor, or the state locating agent, and filing in his office.

(c) That the records of said General Land Office further show, that on March 23rd, 1872, there was on file in said office a list of lands in Dickinson County purporting to have been selected as swamp lands by Benjamin F. Parmenter, appointed by the County Court of that county in 1857, to make such selections; which list is sworn to by Parmenter before the County Judge of Dickinson County, July 23rd 1860 and is endorsed, "Posted in [track] book May 28th, 1872," but no prior record of any kind appears in regard thereto, nor does it appear who transmitted the list to the General Land Office.

61 That neither of said lists was ever adopted, ratified or confirmed in any manner by the Interior or Land Department of the United States; but said counties continued to claim said lands as swamp and as having been se-

lected as such by or for them under authority of an act of the General Assembly of Iowa approved January 13th, 1853; and said McGregor Western Railroad Company and its successors in interest successively made claim to said lands as inuring to said companies respectively under said act of congress of May 12th, 1864.

That on May 31st, and October 21st 1876 the Commissioner of the General Land Office upon public hearings of the matter of such claims, after due notice to all parties interested held and adjudged in writing that the lands described in said lists were not in fact swamp lands, nor embraced in said act of Congress of September 28th, 1850, and that the state of Iowa and said several counties were never entitled to said lands or any part thereof under said act; that said hearings were pursuant to the act of Congress of March 3th, 1872, 17 Stat. 37 C. 39, and said findings and decisions of said Commissioner were never appealed from, reversed, or modified in any manner.

IV. That the lands described in the bill of complaint are of the alternate sections and parts thereof designated by odd numbers within ten sections in width on each side of the line of the definite location of said McGregor Western Railroad and were, except two hundred acres thereof, prior to March 2nd, 1896, sold and duly conveyed by the defendant company to numerous persons who bought the same in good faith and for value; and on October 21st 1898 the Secretary of the Interior held in writing that the titles of all the purchasers of said lands were confirmed in them respectively, under the terms of the act of Congress approved March 2nd, 1896, 29 Stat. 42 C. 39; that due demands were made upon defendant, by direction of the Secretary of the Interior that it re-convey to the United States all of the lands described in the bill of complaint and that it pay to the United States the government price of $2.50 per acre for said lands and that defendant has failed to comply with either of said demands.

62 V. That the defendant railway company did not receive from the United States either directly or through the state of Iowa, the full quota of lands to which it was lawfully entitled under said grant of May 12th, 1864 and that such deficiency is considerably more than the total acreage of all the lands in controversy in this suit.

Mr. H. G. McMillan, United States Attorney, and Mr. George Crane, Assistant United States Attorney for the United States.

Mr. Charles B. Keeler, and Mr. W. J. Knight, for the defendant. Reed, District Judge.

The principal question for determination is; were the lands

described in the bill of complaint and patented to the defendant reserved, or excepted from the operation of the grant of May 12th, 1864? That grant is of every alternate section of land designated by odd numbers, within ten sections in width on each side of the line of road of the McGregor Western Railroad Company, as it shall be definitely located, and three classes of lands are excepted from its operations, viz, (1) those which at the time of the definite location of the road have been sold by the United States; (2) those to which the right of pre-emption or homestead settlement has been attached; and (3) those which may then have been reserved to the United States by any act of Congress, or in any other manner by competent authority, for any other purpose whatever. The map of definite location of the road was filed August 30th, 1864. The specific lands granted were then identified and to them the title of the company attached as of May 12th of that year. Under the facts as stipulated by the parties, none of the lands in question had been sold by the United States, nor had the right of pre-emption or homestead settlement attached to any of them at the time the road was located, and they are not therefore, within the first or second classes of the exceptions.

63 It is also agreed that none of them were in fact, of the character of lands embraced in the swamp land grant of September 28th, 1850. This was finally determined by the Commissioner of the General Land Office in 1876; that finding was not appealed from, has never been modified in any way, and is not challenged by either of the parties to this suit, but is relied upon by both as sustaining their respective contentions. The contention of the Government is, that as the lands were claimed to have been swamp lands by the several counties prior to the time the road was located they were excepted from the operation of the grant, and that in-as-much as it was adjudged by the proper authority after the location of the road, that they were not in fact swamp lands, they remained a part of the public domain and were therefore erroneously patented to the defendant. The contention of the defendant is, that the lands were never selected as swamp by any competent authority of the United States, or reserved as such by any act of congress and therefore passed under the grant of May 12th, and were rightly patented to it.

The finding of the Land Department that the lands were not swamp is conclusive upon that question of fact, in the absence of fraud or mistake. But if the lists filed by the respective counties were legally sufficient to segregate the lands from the public domain, the determination by the land Department that

they were not, would be the determination of a legal question which would be subject to review by the courts.

The various grants of public lands by congress for railroad and other purposes, and the exceptions or reservations contained in such grants, have been the subject of frequent consideration by the Supreme Court of the United States; but in none of the cases does the precise question presented by this record seem to have been determined. It is held by that court however, that where lands within the limit of congressional grants similar to the one in question were at the time of
64 the taking effect thereof, covered by pre-emption or homestead entries under the land laws of the United States, or had been granted by other acts of congress, or reserved by other competent authority for other purposes, such lands were excluded from the operation of the grant, though the entries may have been defective or invalid, or the grantees in other grants had failed to comply with the terms thereof, so that in each case the lands reverted to the United States subsequent to the location of the railroad and again became a part of the public domain. But in all of these cases it appears that that the pre-emption or homestead entry or other claim had been accepted or recognized by the proper officers of the Land Department as having attached to the lands, or that the lands were in fact embraced within prior acts of congress or reserved for other purposes by other competent authority acting for or on behalf of the United States. Thus in Whitney vs. Taylor 158 U. S. 85, the map of definite location of a land grant railroad was filed in March 1864, and the road completed in 1868. In May 1857 a pre-emption claim upon the land in controversy was filed in the proper land office and duly entered upon its books, which entry so remained until 1885, when it was cancelled by the Land Department. In 1888 the defendant entered the land as a homestead, subsequently commuted that entry, made final proofs, paid for the land and received the usual government receipt therefor. The plaintiff claimed under mesne conveyances from the railroad company. The title of the defendant prevailed, for the reason that the pre-emption claim having been accepted by the proper local land office prior to the location of the road, had thereby attached to the land and thus excluded it from the operation of the grant to the railroad company. In the opinion it is distinctly held that to have such effect the pre-emption or other claim must be one that is made under the authority of the laws of the United States and accepted or recognized by the proper land office, or other authority as being a valid one, though it may in fact have been defective or invalid. After reviewing its prior decisions the court says:

65 "Although these cases are none of them exactly alike the one before us, yet the principle to be deduced from them is that when on the records of the local land office there is an existing claim on the part of an individual under the homestead or pre-emption law, which has been recognized by the officers of the government, and has not been cancelled or set aside, the tract in respect to which that claim is existing is excepted from the operation of a railroad land grant containing the ordinary excepting clauses, and this notwithstanding such claim may not be enforceable by the claimant, and is subject to cancellation by the government at its own suggestion, or upon the application of other parties. * * * In this respect notice may also be taken of the rule prevailing in the land department where the filing of the declaratory statement is recognized as the assertion of a pre-emption claim which excepts a tract from the scope of a railroad grant like this."

Railroad vs. Whitney 132 U. S. 357 differs from the preceding case only in the fact that the entry accepted by the local land office was a homestead, instead of a pre-emption entry. After stating the essential requisites of a valid homestead entry, and that if it is defective in either of these essentials, the local land office is justified in rejecting it, the court says:

"But if, notwithstanding these defects, the application is allowed by the land officers, and a certificate of entry is delivered to the applicant, and the entry is made of record, such entry may be afterwards cancelled on account of these defects. * * * But these defects whether they be of form or substance, by no means render the entry a nullity. So long as it remains a subsisting entry of record, whose legality has been passed upon by the land authorities, and their action remains unreversed, it is such an appropriation of the tract as segregates it from the public domain and therefore precludes it from subsequent grants."

In Newhall vs. Sanger, 92 U. S. 761, it is held that the existence of an alleged Mexican grant of lands, the validity of which was pending at the time of the definite location of a land grant railroad before the tribunal created by congress to determine the validity of such grant, was sufficient to exclude lands within its boundaries from the operation of the railroad grant, such lands having been reserved by congress from sale or other disposition pending the investigation of the Mexican grant, which was finally adjudged invalid shortly after the location of the railroad.

In Leavenworth R. R. Co. vs. United States 92 U. S.
66 733, lands reserved to the Osage Indians by treaty made with them prior to a railroad grant, though not specific-

ally reserved in the grant, were held to be reserved from its operation by force of a proviso excepting "the lands heretofore reserved to the United States by any act of congress, or in any other manner by competent authority * * * or for any other purpose whatever."

In United States vs. Southern Pacific Railroad Co., 146 U. S. 570, it is held that the filing of the map of definite location by the Atlantic & Pacific Co., under the act of July 27th, 1866 granting lands to that company, when approved by the Secretary of the Interior, operated to withdraw the lands granted from the public lands of the United States, so that they did not pass under the subsequent grant of March 3rd 1871, to the Southern Pacific Co., though the Atlantic & Pacific Co., failed to comply with its grant, and it was forfeited and the lands restored to the United States by Congress in 1886, after the grant to the Southern Pacific Company, had taken effect.

In Railway Company vs. Dunmeyer, 113 U. S. 629 it is said:

"The reasonable purpose of the Government undoubtedly is that which is expressed, namely, while we are giving liberally to the railroad company, we do not give any lands which we have already sold, or to which according to our laws, we have permitted a pre-emption or homestead right to attach." The rule is again announced in the recent case of the Southern Pacific Company vs. The United States (No. 2) 200 U. S. 354.

It is thus settled that to segregate lands from the public domain so that they may not pass under subsequent grants by congress, they must have been previously reserved or withdrawn from sale by competent authority acting for or on behalf of the United States.

Were the lands in question so reserved or withdrawn as being swamp lands? By the Swamp Land grant the Secretary of the Interior is charged with the duty of selecting and making lists of all lands embraced within the grant and causing patents to be issued therefore to the several states in which they are located and in the issuance of such patents the title to the land vests in the state. On November 21st 1850 the Commissioner of the General Land Office directed the
67 Surveyor General for Iowa, to make out a list of all the lands so granted to the State of Iowa, and in his letter said: "The only reliable data in your possession from which these list can be made are the field notes of the surveyor on file in your office, and if the authorities of the state are willing to adopt these as a basis of the lists you will so regard them. If not and they furnish you satisfactory evidence that any lands are of the character embraced in the grant you will

report them." This is an explicit direction by the Land Department to select in the first instance as swamp the lands which the field notes of the surveyors show to be of that character, and if the state authorities are unwilling to adopt these as the basis of the selection and will furnish satisfactory evidence that any other lands are embraced in the grant, the evidence so furnished is to be reported by the Surveyor General to the Land Department, thus making any selections that might be made by the state authorities subject to the approval of the Land Department. It does not appear what the field notes show as to the character of the lands in question, further than is to be inferred from the final determination that they were not in fact swamp.

In 1853, the state of Iowa by act of its General Assembly granted to the several counties of the state the swamp lands in said counties embraced in the Swamp Land Grant, and authorized the county courts of each of the counties to appoint competent persons to examine the lands and make due report and plats of the swamp lands therein to such court; which courts were required to transmit to the proper officers lists of the lands so selected, in order to procure the proper recognition of the same on the part of the United States Laws of Iowa 1853, Ch. 12. It would thus appear that the state authorities were unwilling to adopt the field notes of the surveyors, as the proper basis for the selection of the swamp lands in that state, and undertook themselves to make and furnish lists of such lands. But it is plain that the lists furnished by the state authorities would be without effect to withdraw or segregate the lands therein described from the public lands of the United States unless they were approved by the Secretary of the Interior, or other competent authority of the United
68 States.

Railroad Co. vs. Price Co. 133 U. S. 496-511, 512.
Humbird vs. Avery 195 U. S. 480 507, 508.
Djoli vs. Dreschel 197 U. S.. 564-569.

The fact that these lists were presented to the Surveyor General and transmitted to the General Land Office by him is not important, for his authority was expressly limited by his instructions to making lists from the field notes of the surveyors and to reporting any evidence that might be furnished by the state authorities as to the character of the lands. The Secretary of the Interior only was authorized primarily to identify what lands were embraced within the Swamp Land grant.

French vs. Fyan, 93 U. S. 169.
Barden vs. Northern Pacific Ry. Co., 154 U. S. 288-320.
Rogers Locomotive Works vs. American Emigrant Co. 161 U. S. 559-574.

In the last named case the Locomotive works claimed certain lands in Calhoun County this state, under the Railroad grant of 1856; and the Emigrant Co., claimed the same lands under conveyance from Calhoun County as swamp lands. In holding that the title passed under the railroad grant the Court among other things, said:

"In French vs. Fyan 93 U. S. 169, this court decided that by the second section of the Swamp Land act the power and duty devolved upon the Secretary of the Interior as the head of the Land Department, of determining what lands were of the description granted by that act, and made his office the tribunal whose decision on that subject was to be controlling. The identification of lands as lands embraced by the Swamp Land act was therefore necessary before the state could claim a patent, or exercise absolute control of them. *** The Emigrant Company lays much stress upon that clause of the railroad act of 1856 exempting from its operation all lands previously reserved by the United States for any purpose. And upon this foundation it rests the contention that no lands embraced by the Swamp Land act of 1850 could, under any circumstances, be withdrawn by the Land Department from its operation, and certified to the state under the railroad act of 1856. This contention assumes that the lands in controversy were within the meaning of the act of 1850, swamp and overflowed lands, But the fact was to be determined, in the first instance, by the Secretary of the Interior. It belonged to him, primarily to identify all lands that were to go to the State under the act of 1850. When he made such identification then, and not before the state was entitled to a patent."

By the act of March 3rd, 1857 11 Stat. 251 C. 117 it is [provied] "That the selection of swamp and overflowed
69 lands granted to the several states by the act of September 28th, 1850 heretofore made and reported to the Commissioner of the General Land Office so far as the same shall remain vacant and unappropriated be and are hereby confirmed and shall be approved and patented to the several states in conformity with the provisions of the act aforesaid." This act is expressly limited to such selections as had theretofore been made, and is a recognition by Congress of the necessity of the approval of such selections by competent authority of the United States, before they are of any effect. No other act of Congress prior to August 30th 1864 refers to or recognizes in any manner any lists furnished by state authority, and from

the stipulation of facts it appears that none of the lists filed by the respective counties in this case, was ever adopted, ratified or confirmed in any manner by the Interior [of] Land Departments of the United States. These lists were not therefore prior to August 30th, 1864 accepted or recognized for any purpose by any competent authority acting for or on behalf of the United States.

But it also appears from the stipulation of facts, that the Kossuth county list was filed in the General Land Office August 25th 1859, that of Palo Alto County April 3rd 1850; and that that of Dickinson County was sworn to before the county Judge of that county July 23rd 1860, but it does not appear when or how it reached the Land Department. On June 23rd 1860 the Commissioner of the General Land Office transmitted to the Surveyor General of Iowa a letter in which among other things he said: "Referring to your letter of the 15th inst. asking to be advised as to your duty in reporting swamp land selections in Iowa, and in view of the act of the 12th of March last a copy of which was furnished you in my letter of the 21st ult., I will here set forth the principles which you are to apply to any selections now on your files and to all others, also, which may hereafter be reported to you by agents of the State. * * * Testimony now after the lapse of nine years, to be available, must be explicit, resting upon the personal and exact knowledge of the localities claimed, and must relate to each quarter, quarter section or other equivalent legal subdivision. This testimony must be made by
70 parties having no [inter-] present or prospective, direct or indirect, and must state the name of the river or watercourse whereby the lands are submerged and rendered useless for arable purposes in their natural condition. * * * You will, as soon as your report is arranged and prepared for transmission to this office, send simultaneously a copy thereof to the local offices of the proper land districts, with instructions to them to enter the tracts in the usual form in their books and withhold them from sale or other disposition, unless, otherwise especially directed by this office." The act of March 12th, to which reference is made in this letter, fixes the time within which the selections shall be made, 12 Stat 3, and no doubt prompted the letter of the 21st ult., referred to. A form of the proofs required of the state authorities is enclosed with this letter of June 23, 1860, but the lists furnished by the respective counties wholly fail to comply with its requirements. This letter is a plain dis-approval by the Commissioner of the lists of two of the counties then on file in the General Land Office, and a determination by him that other lists of like character would not be recognized.

This letter is also the first direction from the Land Department to enter any selection of lands made by the state authorities upon the books of the Land Office, or to withhold them from sale or other disposition and the stipulation of facts shows that the Surveyor General made no further report of swamp land selections in either of the counties and gave no direction to any of the local land offices to withhold any of the lands in question from sale or other disposition as required by this letter.

Such was the status of the lands in question on August 30th, 1864, when the map of definite location of the McGregor Western Railroad was filed, and the lands within the limits of the grant to that road withdrawn from the market, and it so remained until the passage of the act of March 5th, 1872, entitled "An act for the relief of Lucas and other counties in the state of Iowa" wherein it is provided "That the Commissioner of the General Land Office is hereby authorized and required to receive and examine the selections of swamp lands in Lucas, Dickinson and such other counties in the state of Iowa
71 as formerly presented their selections to the Surveyor General of the district including the state, and allow or dis-allow said selections and the indemnity provided for according to the acts of Congress in force touching the same at the time such selections were made" 17 Stat. 37. This is the first recognition by congress of selections made by state authorities, and this only to the extent of requiring the Commissioner of the General Land Office to receive and examine and allow or dis-allow them and the indemnity provided for according to the acts of Congress in force when the selections were made. Whatever the purpose of this act it was some eight years after the rights of the McGregor Western Railroad Company under the grant of May 12th, 1864, had attached and does not operate retrospectively to affect that grant.

In Railroad Co. vs. United States 92 U. S. 733 above, it is held that congressional grants of public lands are confined to those the title of which is complete in the United States; and in Nehall vs. Sanger 92 U. S. 761, it is said, "The words, 'Public lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws." The title of the United States to the lands in question was complete on May 12th, 1864, and at the time of the definite location of the road under the provisions of the act of the date, no claims or rights of any kind to any of said lands had been previously recognized by any authority of the United States, save only by said act. The lands therefore might have been sold by the United States, or the right of pre-emption of homestead entry might have attached to them at any time before the

definite location of the road, and the complete title thereto would have passed under such sale, or under such entries if they were subsequently perfected.

Some stress is laid by counsel for the Government upon an admission in paragraph seventeen of the answer, "That at the date of the definite location of the McGregor Western Railroad all the lands mentioned in the complainant's Exhibit "A" the lands in question,—purported to have been selected and claimed on behalf of the state of Iowa as swamp and overflowed lands." But this is only an admission that the lands were "purported to have been so selected and claimed by
72 the state authorities" and not that they had been approved by any authority of the United States. The admission must be construed in connection with the other parts of the answer, which explicitly controvert the allegations of the bill, that these lands were excluded from the operation of the grant of May 12th.

The conclusion therefore is, that the lands in question were not on August 30th, 1864, segregated from the public domain, and that they passed under the grant of May 12th of that year, and were rightly patented to the defendant. This renders it unnecessary to consider the other question presented. The bill should therefore be dismissed, and it is so ordered.

Filed December 4th, 1906. A. J. VanDuzee, Clerk.

73 And on the 4th day of December 1906 the following proceedings were had by said court as appears of record in said case on page 372 of Record No. 5 of the record of said court, to-wit:

United States of America,
No. 233. vs. Equity.
Chicago, Milwaukee & St. Paul Railway Company.

Now this 4th day of December, A. D. 1906, the above entitled cause comes before the court, the same having been heretofore submitted to the court, upon the pleadings and evidence, and taken under advisement by the court, and the court now being fully advised in the premises;

It is ordered, adjudged and decreed by the court that the bill of complaint herein be and the same hereby is dismissed.

And on the 5th day of December 1906 there was filed in the office of the clerk of said court, in said cause, a petition for appeal which is in words and figures following:

United States Circuit Court, for Northern District of Iowa, Eastern Division.

The United States of America
No. 233. vs. Equity.
Chicago, Milwaukee & St. Paul Railway Company.

To the Honorable Judge of said Circuit Court:

Your petitioner the complainant in the above entitled cause, would respectfully represent and show that in the above entitled cause, now pending in the said United States Circuit Court, an order dismissing your petitioner's bill of complaint and thereby rendering a final decree in said cause has been made, greatly to the prejudice of and injury of your petitioner, and which said order and decree are erroneous and in-
74 equitable in many particulars, an assignment of which alleged errors is herewith presented;

Wherefore in order that your petitioner may obtain relief in the premises, and have opportunity to show the error complained of, your petitioner prays that it may be allowed an appeal in said cause to the Honorable Circuit Court of Appeals in and for the Eighth Circuit of the United States, and that proper orders touching the security required, if any, may be made.

H. G. McMILLAN.
United States Attorney.
By George Crane,
Assistant U. S. Atty.

Dated Dec. 5th, 1906.

Allowed Jan. 7, 1907 H. T. Reed Judge.

Petition filed December 5th, 1906 A. J. VanDuzee, Clerk.

On the 18th day of December 1906 there was filed in the office of the Clerk of said Court in this cause an Assignment of Error which is in words and figures following.

In the Circuit Court of the United States in and for the Northern District of Iowa, Eastern Division Dec. Term 1906.

United States of America,
vs. In Equity.
The Chicago Milwaukee & St. Paul Railway Company.

Assignment of Errors in above entitled cause, for review of Circuit Court of Appeals.

First; The Court erred in dismissing the Plaintiff's Bill of Complaint.

75 Second; The Court erred in rendering a decision in favor of the defendant and against the plaintiff.

Third; The Court erred in finding and deciding that the lands mentioned in the Bill of Complaint passed to defendant grantors, under the Act of Congress approved May 12th, 1864.

Fourth; The court erred in finding that there was no claim of record consisting of swamp land selections at the date of the passage of the last named act.

Fifth; The court erred in holding that the lands mentioned in the bill of complaint were not withdrawn and segregated from the public lands of the United States at the time of the final location of the defendant's railroad that is on or before August 30th, 1864.

Sixth; The Court erred in deciding that the mere pending of the claim of the State of Iowa in the office of the Commissioner of the General Land Office on or before the 30th day of August A. D. 1864 on the ground that said lands were swamp lands and as such belonged to said state did not exempt said lands from the effect and operation of said land grant act approved May 12, 1864.

Seventh; The court erred in holding that the title of the United States to the lands in question was complete on May 12, 1864 and at the time of the definite location of the railroad under the provisions of said act.

Eighth; The court erred in holding that the lists of lands in question were not prior to August 30th, 1864, accepted or recognized for any purpose by any competent authority acting for or on behalf of the United States.

Ninth; The court erred in holding that claims of record have to be accepted or approved as valid by some competent authority of the United States in order to withdraw or segregate the lands claimed from the public domain.

Tenth; The Court erred in holding that the lists furnished by the state authorities would be without effect to withdraw or segregate the lands therein described from the public lands of the United States unless they were approved by the
76 Secretary of the Interior or other competent authority of the United States.

To correct said errors an appeal is prayed for.

By GEORGE CRANE,
Asst. U. S. Atty.

Filed Dec. 18, 1906. A. J. VanDuzee, Clerk.

And on the 7th day of Jan. 1907 the following proceedings were had by said court as appears of record on page 392 of Minutes No. 5 of said Court, to-wit:

United States of America,
No. 233 vs. Equity.
Chicago, Milwaukee & St. Paul Railway Company.

And now to-wit on [thid] 7th day of January 1907, it is ordered by the court that the claim for appeal in the foregoing entitled cause filed by the complainant on the 5th day of December A. D. 1906 be and hereby is allowed as prayed for.

HENRY T. REED, Judge.

77 The United States of America,

To Chicago, Milwaukee & St. Paul Railway Company—
Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this Citation bears date, pursuant to an appeal filed in the Clerk's office of the Circuit Court of the United States for the Eastern Division of the Northern District of Iowa, wherein United States of America is appellant, and you are appellee, to show cause, if any there be, why the judgment and decree rendered again the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should note be done the parties in that behalf.

Witness, the Honorable Henry T. Reed, Judge of the Circuit Court of the United States for the Northern District of Iowa, this seventh day of January in the year of our Lord one thousand nine hundred and seven.

Seal of Circuit Court U. S. Northern District of Iowa.

HENRY T. REED,
United States District Judge, for the Northern District of Iowa.

This writ came into my hands for service at Dubuque, Dubuque Co. Iowa, on the 7th day of January 1907, and I served the same on the within named Chicago, Milwaukee & St. Paul Ry. Co. by delivering to J. W. Stapleton Division Superintendent of the said Chicago, Milwaukee Ry. Co. a true copy of this writ at Dubuque, Dubuque County, Iowa, on the 9th day of Jan. 1907.

Fees & cost $2.06.

EDWARD KNOTT,
U. S. Marshal.
By J. W. Philpot, Deputy.

No. 233 Equity. United States Circuit Court, Eastern Division of the Northern District of Iowa. U. S. of America, vs. Chicago, Milwaukee & St. Paul Ry. Co. Citation. Filed Jany. 9, /07, A. J. VanDuzee, Clerk.

78 United States of America,
Northern District of Iowa.

I, A. J. VanDuzee, Clerk of the Circuit Court of the United States in and for the Northern District of Iowa, do hereby certify that the foregoing transcript contains a full, true and complete copy of the record and proceedings in the case of United States of America, Complainant vs. The Chicago, Milwaukee & St. Paul Railway Company, defendant, No. 233 Equity, as full, true and complete as the original of the same now remains on file and of record in my office.

I further certify that the original citation with the return of service thereon endorsed, is hereto attached and returned herewith.

Seal of Circuit Court U. S. Northern District of Iowa.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court at Dubuque in said District this 15 day of January A. D. 1907.

A. J. VAN DUZEE,
Clerk United States Circuit Court, Northern District of Iowa.

Filed Jan. 17, 1907. John D. Jordan, Clerk.

58 (Appearance of Mr. George Crane as counsel for appellant.)
On the twenty-eighth day of January, A. D. 1907, the appearance of Mr. George Crane, as counsel for appellant, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company.	No. 2545.

The clerk will enter my appearance as counsel for the appellant.

GEORGE CRANE,
Asst. U. S. Attorney.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2545. United States of America, appellant, vs. Chicago, Milwaukee and St. Paul Ry. Co. Appearance. Filed Jan. 28, 1907. John D. Jordan, clerk. George Crane, counsel for appellant.

(Appearance of Mr. Charles B. Keeler as counsel for appellee.)
And on the twenty-fifth day of March, A. D. 1907, the appearance of Mr. Charles B. Keeler, as counsel for appellee, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company.	No. 2545.

The clerk will enter my appearance as counsel for the appellee.

CHAS. B. KEELER,
1343 Railway Exchange, Chicago.

59 (Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2545. United States of America, appellant, vs. Chicago, Milwaukee and St. Paul Railway Co. Appearance. Filed Mar. 25, 1907. John D. Jordan, clerk. Charles B. Keeler, counsel for appellee.

(Appearance of Mr. F. F. Faville as counsel for appellant.)
And on the twenty-first day of October, A. D. 1907, the appearance of Mr. F. F. Faville, as counsel for appellant, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY Company.	No. 2545.

The clerk will enter my appearance as counsel for the appellant.

F. F. FAVILLE,
U. S. Attorney, Storm Lake, Iowa.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2545. United States of America, appellant, vs. Chicago, Milwaukee and St. Paul Railway Company. Appearance. Filed Oct. 21, 1907. John D. Jordan, clerk. F. F. Faville, counsel for appellant.

(Appearance of Mr. John A. Russell as counsel for appellee.)

And on the twenty-sixth day of October, A. D. 1907, the appearance of Mr. John A. Russell, as counsel for appellee, was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

60 UNITED STATES OF AMERICA, APPELLANT, *vs.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.	No. 2545.

The clerk will enter my appearance as counsel for the appellee.

JOHN A. RUSSELL,
1343 Railway Exchange, Chicago, Illinois.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2545. United States of America, appellant, vs. Chicago, Milwaukee and St. Paul Railway Company. Appearance. Filed Oct. 26, 1907. John D. Jordan, clerk. John A. Russell, 1343 Railway Exchange, Chicago, Ill., counsel for appellee.

(Appearance of Mr. J. A. Rogers as counsel for appellant.)

And on the twenty-eighth day of October, A. D. 1907, the appearance of Mr. J. A. Rogers as counsel for appellant was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE UNITED STATES OF AMERICA, APPELLANT, *vs.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY.	No. 2545.

The clerk will enter my appearance as counsel for the appellant.

J. A. ROGERS,
Asst. U. S. Attorney, &c., Clarion, Iowa.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2545. United States of America, appellant, vs. Chicago, Mil-

waukee and St. Paul Railway Co. Appearance. Filed Oct. 28, 1907. John D. Jordan, clerk. J. A. Rogers, asst. U. S. attorney, counsel for appellant.

61 (Appearance of Mr. Charles E. Vroman as counsel for appellee.)

And on the seventh day of December, A. D. 1907, the appearance of Mr. Charles E. Vroman as counsel for appellee was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY. } No. 2545.

The clerk will enter my appearance as counsel for the appellee.

CHAS. E. VROMAN.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2545. United States of America, appellant, vs. Chicago, Milwaukee and St. Paul Railway Company. Appearance. Filed Dec. 7, 1907. John D. Jordan, clerk. Charles E. Vroman, counsel for appellee.

Order of submission.

And on the third day of December, A. D. 1907, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit. December term, 1907.

TUESDAY, *December 3, 1907.*

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY. } No. 2545.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

This cause having been called for hearing in its regular order, argument was commenced by Mr. F. F. Faville, in behalf of appellant, continued by Mr. Charles E. Vroman, for appellee, and
62 concluded by Mr. F. F. Faville for the appellant.

Thereupon this cause was submitted to the court upon the transcript of record from said Circuit Court and the briefs of counsel filed herein.

Opinion.

And on the third day of March, A. D. 1908, an opinion of said United States Circuit Court of Appeals was filed in said cause, in the words and figures following, to wit:

63 United States Circuit Court of Appeals, Eighth Circuit, No. 2545. December term, A. D. 1907.

UNITED STATES OF AMERICA, APPELLANT, *vs.* CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY, appellee.	Appeal from the Circuit Court of the United States for the Northern District of Iowa.

Mr. F. F. Faville (Mr. J. A. Rogers was with him on the brief) for appellant. Mr. Charles E. Vroman (Mr. W. J. Knight was with him on the brief) for appellee.

Before Sanborn, Hook, and Adams, circuit judges.

Adams, circuit judge, delivered the opinion of the court:

This was an action in equity brought by the United States, pursuant to the provisions of the act of March 3, 1887 (24 Stat., 556) and the act of March 2, 1896 (29 Stat., 42), and section 2357 of the Revised Statutes, against the defendant railway company for an accounting and to recover the value of certain lands situated in Kossuth, Palo Alto, and Dickinson counties, in the State of Iowa, alleged to have been erroneously patented to and afterwards sold by the railway company. The lands are conceded to have been within the grant to the State of Iowa for the benefit of the McGregor Western Railroad Company and its lawfully constituted successor, the defendant railway company, by the act of May 12, 1864 (13 Stat., 72), and to have been lawfully and properly patented to the State and by it to the railway company unless the same had been prior thereto reserved by the United States for some other purpose within the meaning of the act of 1864. That act, after granting every alternate odd section of land for ten sections in width on each side of the road as it should be located, provides that in case it should appear when the lines or routes of said roads are definitely located that the United States have "sold any section or any part thereof granted as aforesaid or that the right of preemption or homestead settlement has attached to the same or that the same has been reserved by the
64 United States for any purpose whatever," then selections might be made within certain fixed indemnity limits to make up for such lost lands. To emphasize this general language the act contains the following specific provision: "Provided further, that any and all lands heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement or

other purpose whatever, be and the same are hereby reserved and excepted from the operation of this act." The map of definite location of defendant's railroad was filed August 30, 1864.

There is no claim that the lands in controversy had been sold by the United States or that the rights of any preemptor or homestead settler had attached to them before the grant of 1864, but it is claimed by the United States that the lands had been so reserved by proceedings taken under the act of September 28, 1850 (9 Stat., 519), known as the swamp land act, as to segregate them from the public domain and withdraw them from sale; and accordingly, that in view of such proceedings title to these lands never passed to the State for the benefit of the railroad company by that grant.

Did the act of September 28, 1850, and proceedings taken under it in Iowa amount to a reservation of the lands in controversy from sale?

The swamp land act of 1850 was enacted primarily for the benefit of the State of Arkansas, but section 4 extended its provisions to and for the benefit of any other State in which swamp and overflowed lands were situated, and this extension, it is conceded, covered the State of Iowa. The act granted to the different States all swamp and overflowed lands unfit for cultivation, to enable them to construct levees and drains and to reclaim them. Section 2 of the act imposed the duty upon the Secretary of the Interior as soon as practicable after the passage of the act to make out an accurate list and plat of such swamp and overflowed lands and transmit the same to the governor of the State in which they were located and at the request of the governor to cause a patent to be issued to the State therefor; and it was provided that upon the issue of such patent the fee-simple title thereto should vest in the State.

This act has been the subject of much litigation and its meaning has now become firmly fixed by the decisions of the Supreme Court of the United States. It was a present grant, proprio vigore, of all lands which were in fact swamp and overflowed lands and unfit for cultivation. But the lands had first to be identified as such before title to any particular lands passed out of the United States. After that identification was made, and not before, the title vested; but it then vested by relation as of the date of the granting act. (Rogers Locomotive Works v. Emigrant Co., 164 U. S., 559, 570; Michigan Land and Lumber Co. v. Rust, 168 U. S., 589, 591; Brown v. Hitchcock, 173 U. S., 473, 476.)

65 The prerequisite identification was entrusted to the Secretary of the Interior as the head of the Department in control of the public lands, and until that tribunal acted the lands remained subject to its jurisdiction and the grant did not take effect upon any particular lands so as to vest title in the State. (French v. Fyan, 93 U. S., 169, 171; Rogers Locomotive Works v. Emigrant Co., supra; Michigan Land and Lumber Co. v. Rust, supra.)

The second section of the act of 1850 created a tribunal to hear and determine what lands fell within the terms of the grant. Whether

any given lands were swamp and overflowed lands and thereby unfit for cultivation was left to the arbitrament of the Secretary of the Interior as the head of the Land Department. Mr. Justice Miller, speaking for the Supreme Court in French v. Fyan, supra, said: "We are of opinion that this section" (2) "devolved upon the Secretary, as the head of the Department which administered the affairs of the public lands, the duty, and conferred on him the power, of determining what lands were of the description granted by that act, and made his office the tribunal whose decision on that subject was to be controlling." It is conceded for the purposes of this case that on October 31, 1876, the Commissioner of the General Land Office, who by law acted for and under the direction of the Secretary of the Interior, after due notice and as a result of a public hearing held and adjudged that the lands in controversy in Kossuth, Palo Alto, and Dickinson counties were not in fact swamp and overflowed lands and were not embraced in the act of 1850: that the State of Iowa and the counties mentioned were never entitled to the lands or any portion of them, and that patents subsequently issued therefor to the State for the benefit of the railway company. The decision of the Land Commissioner so made was never appealed from, reversed, or modified, and there is now no pretence either that there was any mistake of law or misapprehension of the facts brought about by fraud or gross mistake. That decision and the issue of the patents accordingly constitute a binding adjudication upon the parties to this suit that the lands in question were never granted to the State by the swamp land act of 1850. (Wright v. Roseberry, 121 U. S., 488; Barden v. Northern Pac. Railroad, 154 U. S., 288, 327, and cases cited.)

This is not seriously questioned, but the contention of the United States is that the steps taken, in the way of asserting title to the lands by the State, so segregated them from the public domain while the inquiry as to their character was being made that they were not subject to sale in 1864, and for that reason did not pass by the grant in question of that year.

What were those steps? No directions were given to the Secretary of the Interior concerning his method of procedure in the identification of lands within the contemplation of the act of 1850. That seems to have been left to his own discretion. Accordingly, a consideration of the acts done and left undone by him in the exercise of that discretion as well as the acts and doings of the State in the assertion of its claim require consideration.

66 The Commissioner of the General Land Office soon after the act was passed, on November 21, 1850, instructed the United States surveyor-general for the State of Iowa to make out lists of all lands claimed to be granted to the State by that act, and in this letter of instruction said: "The only data in your possession from which these lists can be made are the field notes of the surveyor on file in your office, and if the authorities of the State are willing to adopt these as the basis of these lists you will so regard them. If not, and these authorities furnish you satisfactory evidence that any lands are

of the character embraced in the grant, you will report them." It does not appear that the State authorities were willing to or did adopt the showing made by the field notes to determine their right to the lands. On the contrary, it does appear that the State undertook to demonstrate its right by other satisfactory evidence.

The legislature of Iowa, by section 1 of the act of January 13, 1853 (Laws of Iowa, 1852–4, p. 29, Revision of 1860, p. 148), granted to its several counties the swamp lands situated within their respective boundaries, and by section 3 of the same act provided that—

"In all those counties where the county surveyor has made no examinations and reports of the swamp lands within his county, in compliance with the instructions from the governor, the County Court shall at the next regular term thereof, after the taking effect of this act, appoint some competent person, who shall as soon as may be thereafter, after having been duly sworn for that purpose, proceed to examine said lands, and make due report, and plats, upon which the topography of the country shall be carefully noted, and the places where drains or levees ought to be made, marked on the said plats, to the county courts, respectively, which courts shall transmit to the proper officers lists of all said swamp lands in each of the counties in order to procure the proper recognition of the same, on the part of the United States, which lists, after an acknowledgment of the same by the General Government, shall be recorded in a well-bound book provided for that purpose, and filed among the records of the county court."

Apparently acting under this legislative authority the County Court of Kossuth County appointed two men to select and make a list for that county of what they claimed to be swamp and overflowed lands within the meaning of the act of 1850. They filed their list duly verified in the office of the surveyor-general for Iowa, and on August 2, 1859, that functionary transmitted a true and correct copy thereof to the General Land Office, where it was duly received and filed. The County Court of Palo Alto County appointed one man to act for that county. He made a like list for his county and filed it in the office of the surveyor-general for Iowa, who later, on March 27, 1860, transmitted a true and correct copy thereof to the General Land Office, where in due time it was received and filed. The County Court of Dickinson County appointed one man to act for that county.
67 He made a like list and verified it on July 13, 1860, but for some reason, unexplained in the record, it did not find its way to the General Land Office until 1872.

On June 23, 1860, the Commissioner of the General Land Office wrote the surveyor-general of Iowa the following letter:

"Referring to your letter of the 15th inst., asking to be advised as to your duty in reporting swamp selections in Iowa, and in view of the act of the 12th of March last, a copy of which was furnished you in my letter of the 21st ult., I will here set forth the principles which you are to apply to any selections now on your files and to all others,

also, which may hereafter be reported to you by the agents of the State. 1st. As the grant contemplates the inundation of extensive regions of country by such natural arteries as the Mississippi River, the lands evidently intended to be granted as swamp are those only which, by reason of their swampy character and liability to overflow, are worthless in their natural condition, and whereon crops can not be raised without reclamation by levees and drains. An overflow or inundation from casual cause, merely temporary in its effects, does not bring the land within the grant, and can not be said, in any proper sense, to render them 'unfit for cultivation.' The law contemplates such long-continued overflow or freshets only as would totally destroy crops and prevent the raising of them without artificial means by levees, &c., such as are found on the Mississippi River. 2nd. Bodies of land covered by shallow lakes or ponds, which may become dry by evaporation or other natural causes, do not come within the meaning of the swamp grant. 3rd. Testimony now, after the lapse of nine years, to be available, must be explicit, resting upon the personal and exact knowledge of the localities claimed, and must relate to each quarter, quarter section, or other equivalent legal subdivision. This testimony must be made by parties having no interest, present or prospective, direct or indirect, and must state the name of the river or water course whereby the lands are submerged and rendered useless for arable purposes in their natural condition. 4th. I enclose herewith a blank form of proof which you will require from the State authorities, and if lists of lands of this class are furnished you, accompanied with such evidence, you will report them to this office, in the manner set forth in Form 'B' herewith, after making a careful examination of said proof, and rendering your own decision thereon, as to whether the several tracts are swamp or not, within the meaning of the grant. 5th. You will, as soon as your report is arranged and prepared for transmission to this office, send simultaneously a copy thereof to the local offices of the proper land districts, with instructions to them to enter the tracts in the usual form in their books, and to withhold them from sale or other disposition, unless otherwise especially directed by this office. Be pleased to acknowledge the receipt thereof."

At the time this letter was written the original lists made out by the agents of Kossuth and Palo Alto counties were on file in the office of the surveyor-general of Iowa and had not been acted
68 upon at all by the Secretary of the Interior. The letter makes no direct reference to the copies of the lists which before that time had been sent to the General Land Office, but it seems to carry intrinsic evidence of disapproval of the perfunctory showing made by the agents of the counties just referred to. Whether in the light of this showing or for other reasons, it clearly appears that the Land Commissioner desired explicit evidence of persons possessing exact knowledge of the character of each particular tract claimed to be swamp and overflowed before he would take action.

The record discloses no action taken after the writing of this last letter of instruction until 1872. Not only is there no evidence of any action taken by the Land Department, but it is stipulated of record that the swamp land selections for Kossuth, Palo Alto, and Dickinson counties "were never adopted, ratified, or confirmed in any manner by the Interior or Land Department of the Government, but remained pending and undetermined therein down to the year 1876," when after a full hearing they were disapproved and the lands found and adjudged not to have been swamp or overflowed lands and not to have passed to the State by the act of 1850.

In view of these facts, which conclusively show that the State never took any title to the lands in question and that they in fact belonged to the railway company by virtue of its grant in 1864, the United States must rely exclusively upon the action of the county courts of Iowa in appointing agents to select and make lists of the lands claimed to be swamp and overflowed lands, the filing of those lists with the surveyor-general for the State and the transmission by him of certified copies thereof to the General Land Office at Washington to work a segregation of the lands from the public domain and a withdrawal of them from sale pending an inquiry into the merits of the State's claim.

Were they withdrawn from sale by reason of the acts just recited? Counsel for the United States maintain the affirmative of this question upon the authority of several cases called to our attention, notably: Newhall v. Sanger, 92 U. S., 761; Kansas Pacific Railroad Co. v. Dunmeyer, 113 U. S., 629; Wright v. Roseberry, 121 U. S., 488; Hastings, etc., Railroad Co. v. Whitney, 132 U. S., 357; Whitney v. Taylor, 158 U. S., 85; Southern Pacific Railroad Co. v. United States, 200 U. S., 354; Michigan Land and Lumber Co. v. Rust, supra. In Newhall v. Sanger it was held that lands, claimed under a Mexican or Spanish grant, the right to which was secured by treaty stipulation with Mexico and which were under consideration by a commission created by our Government to determine the validity of such claims, were thereby segregated from the public domain and did not pass by a railroad grant. Here was obviously involved a claim recognized by our Government and one which was then actually sub judice. To the same effect is Southern Pacific Railroad Co. v. United States. In Kansas Pacific Railroad Co. v. Dunmeyer it was held that a homestead entry made by a settler on the public lands and recognized by the proper land office before the filing of a map of definite location by a railroad company which
69 was the beneficiary of a grant, segregated the land entered upon from the public domain so that it did not pass by the grant even though the entry was abandoned after the filing of the map of definite location by the railroad company. Wright v. Roseberry discloses that the authorities of the State of California selected and designated the swamp lands there involved on a plat of a township made by the surveyor-general of the United States; that the same was forwarded to the General Land Office pursuant to a re-

quirement of a statute specially applicable, and was approved by the Commissioner. Even with that recognition of the State's claim, which according to the authorities at least amounted to a segregation of the land, it was held that the issue of a patent to a third party under the preemption laws of the United States on a claim initiated subsequent to the swamp land act was not necessarily void. The right of the parties was made to depend upon the question whether the lands were in fact swamp lands at the date of the act of 1850, and that issue was authorized to be submitted to a jury. The court said: "If they are proved to have been such lands at that date they were not afterwards subject to a preemption by settlers." In Hastings, etc., Railroad Co. v. Whitney it was held that a homestead entry which had been allowed to be made by the register and receiver of a land office, although it turned out to be void, segregated the land from the public domain. In that case the fees were paid by the entryman and the entry was properly noted on the tract books of the land office. The recognition of the claim of the settler by the land office was held to constitute a segregation from the public domain so as to exclude the land entered upon from a subsequent land grant in aid of a railroad. In Whitney v. Taylor it was held that a preemption entry, in which the claimant had filed a declaratory statement, paid the fees required by law in such cases and secured a notation of the statement in the tract books of the proper land office, operated, though the entry was afterwards cancelled, to prevent passing of title by a grant subsequently made to a railroad company. It was held that the land was effectually segregated from the public domain by the recognition of the entry as made, by the land office. Michigan Land and Lumber Co. v. Rust discloses a recognition by the Land Department of certain surveys which were relied upon by the State as determining its right to certain swamp and overflowed lands. It there appears that a list of those lands had been made out according to a certain resurvey which had been ordered, made, and approved by the Secretary of the Interior, and that patents had issued accordingly. It was held that this amounted to a final adjustment of the grant on the terms of the new survey.

The foregoing cases fairly represent the authorities relied on by the United States in support of their contention that the lands in question were, by reason of the claim made by the State to them, segregated from the public domain before the land grant of 1864 took effect and therefore did not pass by that grant. These cases, in our opinion, fail to sustain that contention. They all disclose
70 an assertion of a right to certain land by claimants which was recognized in some manner by the Land Department. We understand the crucial test of segregation is found in such recognition. The right or claim in order to constitute a segregation must be such as in some manner either by receipt of fees for entry, permission to file upon the land, noting the filing upon tract books, submission to a commission under treaty obligation or other like affirmative

action of the Land Department, discloses a recognition of the claim or discloses some privity between the claimant and the United States.

This court has heretofore held that an equitable right to land can prevail over the legal title only "when the former had either been recognized by the United States by a grant or an entry of the land or by the acceptance of payment for it so that the equitable owner was in privity with the Government or the equitable right had been initiated before the claim which went to patent by a settlement or improvement of the land under a law which gave the settler or improver a right to be preferred in its acquisition." (Deweese v. Reinhard, 10 C. C. A., 55, 61 Fed., 777, 781; Hartman v. Warren, 22 C. C. A., 30, 76 Fed., 157, 160; New Dunderberg Min. Co. v. Old, 79 Fed., 598, 606; James v. Germania Iron Co., 46 C. C. A., 476, 107 Fed., 597, 603.)

In view of the foregoing authorities we think the mere assertion of a claim to land unrecognized by the Land Department of the Government in any manner can not operate to reserve or segregate it from the public domain so as to prevent disposition of it by the United States. The consequence of any other doctrine condemns it. If a State can claim any land and by the mere fact of claiming it prevent any subsequent disposition of it, it could claim all lands and thereby prevent disposition of any and all the public domain. The improbability of such conduct on the part of a State does not withdraw its possibility from legitimate consideration. We are not prepared to give our sanction to a rule that would permit this blockade upon settlement and enterprise.

This case, we think, is clearly brought within the rule just stated. It involves a claim by the State to which the Land Department had given no sanction. The method of giving such sanction, specially provided by section 2 of the swamp land act as interpreted by the Supreme Court, was by judicially determining the fact that the lands claimed were swamp and overflowed lands. This was never done. On the contrary, it was finally and conclusively decided they were not of that character. The surveyor-general of Iowa had received lists of lands claimed to be swamp lands by agents of the several counties interested, and had forwarded copies of them to the Land Department for its information only. These lists had obviously been deposited with the surveyor by the State's agents as a step to secure the "proper recognition" of them by the Land Department, acknowledged to be necessary by the Iowa act of 1853. But the surveyor had no judicial function to discharge in the matter. He
71 could only forward the pretensions of the State to the head of the Land Department which alone had power to act in the premises. (Barden v. Northern Pacific Railroad, supra.)

The act of March 3, 1857 (11 Stat., 251), cannot be invoked to give force or effect to the selection of lands made by the State in this case. That was an act inspired by the inaction of the Secretary of the Interior in making out lists of swamp and overflowed lands and it was obviously intended to aid the States in securing a recogni-

tion of selections which they might have made before then. It provided that any selection "heretofore made and reported to the Commissioner of the General Land Office" be confirmed and approved, etc. As no steps had been taken by the State to make selection of the lands in controversy until after the act in question took effect it can have no bearing on this case and no further consideration of it is required.

Conceding without admitting that there might have been a technical segregation of the lands in question pending an inquiry into the merits of the State's claim, we are impressed with the want of equity in favor of the United States in this case. The lands in question not having been swamp and overflowed lands in fact, as was finally and conclusively established by the Secretary of the Interior, passed by the terms of the grant of 1864 to the railway company and its grantees. They belonged to them in equity if not at law. If they in contemplation of law were reserved from sale the right of selection of other lands in lieu of them was conferred by the act. The right of selection was intended to be of equal value to the right lost by the supposed reservation. The right of selection never having been exercised, the United States lost nothing by issuing patents of the land in controversy to the State for the benefit of the railway company. This was done in 1880 and 1881. Since then most, if not all, of the lands have been sold and conveyed to numerous purchasers of small tracts who bought them in good faith and for value. Twenty-five years or more of quiet enjoyment of the land in question have now elapsed. No fraud or unfair practices in any stage of the proceedings leading up to the final patents are charged against the railway company or any persons acting for it. In such circumstances, it would, in our opinion, be inequitable and conducive of no good results to grant the relief sought by this bill. The decree of the Circuit Court dismissing the bill of complaint was correct and is accordingly affirmed.

Filed March 3, 1908.

72 *Decree.*

And on the third day of March, A. D. 1908, in the record of the proceedings of said Circuit Court of Appeals is a decree in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit. December term, 1907.

TUESDAY, *March 3, 1908.*

UNITED STATES OF AMERICA, APPELLANT,
vs.
CHICAGO, MILWAUKEE AND ST. PAUL RAILWAY COMPANY. } No. 2545.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Northern District of Iowa, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed without costs to either party in this court.

MARCH 3, 1908.

Petition for appeal to the Supreme Court of the United States and order allowing same.

And on the twenty-ninth day of May, A. D. 1908, a petition for appeal to the Supreme Court of the United States and order allowing same was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, RESPONDENT.
} Case No. 2545.

73 In equity.

Petition for an appeal.

To the honorable Judges of the Circuit Court of Appeals of the United States, Eighth Circuit:

Your petitioner, the complainant in the above-entitled cause, would respectfully represent and show that in the above-entitled cause an order was entered in the Circuit Court of the United States for the Northern District of Iowa dismissing the complainant's bill, and an appeal was prosecuted from said order to this court; and on the third day of March, A. D. 1908, a final decree was entered in said cause in this court, whereby the said order and decree of the Circuit Court of the United States for the Northern District of Iowa was in all respects affirmed.

And your petitioner, conceiving itself aggrieved by the said final decree so made and entered in the above-entitled cause in this court, does hereby appeal to the Supreme Court of the United States from said order and decree, for the reasons set forth in the assignment of errors which is herewith presented.

Wherefore, in order that your petitioner may obtain relief in the premises and have opportunity to show the errors complained of, your petitioner prays that this petition for said appeal in said cause to the Supreme Court of the United States may be allowed, and that a transcript of the record, proceedings, and papers upon which said order and decree was made, duly authenticated, may be sent to the

Supreme Court of the United States, and that proper orders touching the security required, if any, may be made.

FREDERICK F. FAVILLE,
United States Attorney.
JAMES A. ROGERS,
Asst. United States Attorney,
Solicitors for the Plaintiff.

UNITED STATES OF AMERICA, *ss:*

Upon consideration of the foregoing petition it is now here ordered that the appeal therein prayed to the Supreme Court of the
74 United States be, and the same is hereby, allowed this — day of May, A. D. 1908.

ELMER B. ADAMS,
Judge of the U. S. Circuit Court of Appeals for the Eighth Circuit.

(Endorsed): No. 2545. United States of America, appellant, *vs.* Chicago, Milwaukee and St. Paul Railway Company. Petition for appeal to the Supreme Court of the United States and order allowing same. Filed May 29, 1908. John D. Jordan, Clerk.

Assignment of errors on appeal to Supreme Court of the United States.

And on the twenty-ninth day of May, A. D. 1908, an assignment of errors on appeal to the Supreme Court of the United States was filed in said cause, in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit.

THE UNITED STATES OF AMERICA, COMPLAINANT,
vs.
THE CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY, RESPONDENT.
} Case No. 2545.

In equity.

Assignment of errors in the above-entitled cause for review by the Supreme Court of the United States.

No. 1. The court erred in entering a decree dismissing the complainant's bill of complaint.

No. 2. The court erred in entering a decision in favor of the defendant and against the complainant.

No. 3. The court erred in finding and decreeing that the lands mentioned in the bill of complaint passed to the defendant under the act of Congress approved March 12, 1864.

No. 4. The court erred in finding that the proceedings taken
75 by the agents of the several counties of Iowa and the surveyor-general of Iowa did not constitute a legal segregation of the lands in controversy, prior to the grant to the defendant railway company.

No. 5. The court erred in holding that the lands mentioned in the bill of complaint had not been legally segregated from the public domain at the time of the grant to the defendant railway company.

No. 6. The court erred in holding that the pendency of the claims of the various counties of the State of Iowa, pending a decision by the Secretary of the Interior, did not constitute a legal segregation of the lands in controversy from the public domain.

No. 7. The court erred in holding that the title of the United States to the lands in controversy was good and complete at the time of the grant to the defendant railway company, and that the lands passed to the said railway company under the terms of said grant.

No. 8. The court erred in holding that the steps taken to set apart the lands in controversy as swamp lands prior to the grant to the defendant railway company were not taken by legal and competent authority and in the manner provided by law, and did not constitute a complete and legal segregation of said lands.

No. 9. The court erred in holding that the pendency of the claims of the several counties to the lands in controversy as swamp lands did not segregate said lands from the public domain at the time of the grant to the defendant railway company, even though no competent authority of the United States Government had approved, ratified, or confirmed said selections.

No. 10. The court erred in holding that the letter of June 23, 1860, from the Commissioner of the General Land Office to the surveyor-general of Iowa was a disapproval of the showing made by the agents of the counties of Iowa with regard to the lands in controversy which was then on file.

No. 11. The court erred in holding that the lists of lands furnished by the authorities of the State of Iowa did not have the effect of withdrawing or segregating the lands in controversy from the public domain until such lists were approved by the Secretary of the
76 Interior or other competent authority of the United States.

No. 12. The court erred in holding that the steps taken as shown by the record to set apart these lands were not sanctioned by competent Federal authority.

No. 13. The court erred in holding that the method of giving sanction to a claim of public lands as swamp lands was solely by the judicial determination of the fact that the lands claimed were swamp and overflowed lands.

No. 14. The court erred in holding that the surveyor-general of the State of Iowa had no judicial function to perform in determining the matter of the lists furnished and filed with him by the agents of the several counties of Iowa.

No. 15. The court erred in holding that the lands in controversy belonged to the defendant in equity, and that it would be inequitable to grant the relief sought by the bill.

To correct said errors an appeal in this cause is asked for.

FREDERICK F. FAVILLE,
United States Attorney,
JAMES A. ROGERS,
Assistant United States Attorney,
Solicitors for the Plaintiff.

(Endorsed:) No. 2545. United States of America, appellant, vs. Chicago, Milwaukee and St. Paul Railway Company. Assignment of errors on appeal to Supreme Court of the U. S. Filed May 29, 1908. John D. Jordan, clerk.

Citation.

And on the fourth day of June, A. D. 1908, a citation on appeal to the Supreme Court of the United States was filed in said cause, the original of which, with the marshal's return of service, is hereto attached and herewith returned:

77 The United States of America to the Chicago, Milwaukee and St. Paul Railway Company greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, D. C., thirty days from and after the date this citation bears date, pursuant to an appeal filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, wherein the United States of America is appellant and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in said appeal mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the honorable Elmer B. Adams, judge of the United States Circuit Court of Appeals for the Eighth Circuit, this 29th day of May, in the year of our Lord one thousand nine hundred and eight.

ELMER B. ADAMS,
Judge of the United States Circuit Court of Appeals
for the Eighth Circuit.

78 This writ came into my hands for service on the 2nd day of June, 1908, and I served the same upon the Chicago, Milwaukee & Saint Paul Railway Company by service on J. W. Stapleton, division superintendent of said railway company, at Dubuque, in Dubuque County, Iowa (reading waived), on the 2nd day of June, 1908, and delivered to him a true copy of this writ.

EDWARD KNOTT,
U. S. Marshal.
By H. POOLE,
Office Deputy.

Marshal's costs, $2.12.

(Indorsement:) No. 2545. United States Circuit Court of Appeals, Eighth Circuit. The United States of America, appellant, vs. Chicago, Milwaukee & St. Paul Railway Company. Citation on appeal. Filed June 4, 1908. John D. Jordan, clerk.

79 *Clerk's certificate.*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the pleadings, record entries, and proceedings, including the opinion of said United States Circuit Court of Appeals, in a certain cause in said court wherein the United States of America is appellant and the Chicago, Milwaukee and St. Paul Railway Company is appellee, No. 2545, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I do further certify that the original citation, with the marshal's return of service, is hereto attached and herewith returned.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this eighth day of June, A. D. 1908.

[SEAL]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

80 (Indorsement on cover:) File No. 21223. U. S. Circuit Court Appeals, 8th Circuit. Term No., 427. The United States, appellant, vs. The Chicago, Milwaukee & St. Paul Railway Company. Filed June 11th, 1908. File No., 21223.

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